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TO ACCEPT THE FINDINGS AND TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1009

TO ACCEPT THE FINDINGS AND TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

JUNE 17, 1987

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TO ACCEPT THE FINDINGS AND TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

WEDNESDAY, JUNE 17, 1987

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:05 p.m., in room SD-342, Dirksen Senate Office Building, Hon. David Pryor, Chairman of the Subcommittee, presiding.

Present: Senators Pryor and Stevens.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Good afternoon. The Subcommittee will come to order. I have a very short statement that I will read and then we will proceed to hear our distinguished witnesses.

The purpose of today's hearing is to receive testimony on Senate bill 1009. This legislation accepts the findings and implements the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

The Commission was established by the Congress in 1980 and conducted an exhaustive search of the available evidence, interviewed hundreds of the people involved, and after much deliberation reported to the Congress in 1983.

Since the report was issued, there have been several attempts to enact legislation. The bill before us today, which has 73 cosponsors in the Senate, has been crafted under the able leadership of Senator Spark Matsunaga, Senator Daniel Inouye, and others.

I might add a personal note that to get 73 Senators to agree on anything is a remarkable achievement in itself—largely attributable to the able leadership and to the high regard the Senate has for these two distinguished Senators.

Field hearings of this Subcommittee, under the Chairmanship of Senator Stevens, in 1984 were, I think, particularly important in getting us to the point where we are today.

I would like to read a few quotes and conclusions from the Commission's report, and I quote:

> Not a single documented act of espionage, sabotage or fifth column activity was committed by an American citizen of Japanese ancestry or a resident Japanese alien on the West Coast.

A further quote from the Commission report:

> The personal injustice of excluding, removing and detaining loyal American citizens is manifest. Such events are extraordinary and unique in American history. For every citizen and for American public life, they pose haunting questions about our country and its past.

On a more personal note, I can tell you that I am very much aware of the many paradoxes and contradictions of the events that bring us here today. As an Arkansan holding public office, I have had the opportunity on two separate occasions to speak at Rohwer, Arkansas, which was the site of one of these relocation camps. The first time was when a monument was dedicated to commemorate the camp itself; the second occasion was to dedicate a monument to honor the courageous soldiers who served in the famous 442nd Regimental Combat Team.

I might add that two of our distinguished Senators, Spark Matsunaga and Daniel Inouye, here today, both served this country with great honor and with great pride, I know, in the 442nd Regimental Combat Team. They were both highly decorated.

These were an amazing core of dedicated American citizens who despite being uprooted and involuntarily relocated far from their homes and businesses still chose to serve their country—the very country ordering their relocation—as brave and gallant soldiers. In fact, they served with such distinction, they made up one of the most decorated combat units in U.S. history.

In my own State, in Jerome, Arkansas, we had a second camp of this nature. Also, another little bit of irony or paradox I would like to share with my two colleagues this morning. The director—the late E.B. Whittaker—of both the Jerome camp and the Rohwer camp, grandson, Mr. Louis Light, is a member of this very Subcommittee staff. It is, indeed, a small world.

S. 1009 is a serious and thoughtful piece of legislation which addresses the fundamental issue of individual liberty. This year we celebrate the bicentennial of our Constitution, that great American document which spells out the rights of our citizens. It is altogether fitting and proper that we consider this legislation at this most opportune moment.

Witnesses are requested to keep their remarks to no more than 5 to 10 minutes, and their complete statement shall appear in the record. We look forward to hearing this testimony today.

Senator PRYOR. Senator Matsunaga, we welcome you today.

TESTIMONY OF HON. SPARK MATSUNAGA, U.S. SENATOR FROM THE STATE OF HAWAII

Senator MATSUNAGA. Thank you, Mr. Chairman. As the introducer of S. 1009, a bill co-sponsored by 73 of my colleagues, meaning 74 in total, I want to thank you for scheduling this hearing and offering me an opportunity to testify in support of this historic legislation.

I might initially call to the attention of the Chairman that the House Judiciary Committee earlier this morning, reported out its companion redress bill, by a vote of 28 to 6.

S. 1009 seeks to remedy one of the worst violations of civil liberties in our Nation's history and it is fitting that the bill should be the subject of Congressional consideration in 1987 as we observe the 200th anniversary of the United States Constitution. S. 1009 would implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians, as the Chair has stated, a distinguished 9-member panel instituted by Congress in 1980 to examine the facts surrounding the issuance of Executive Order 9066 and the subsequent relocation and internment of 120,000 American citizens and resident aliens of Japanese ancestry during World War II.

The Commission was also mandated by Congress to study the circumstances surrounding the evacuation of the Aleutian Islands and the relocation of Native American Aleuts. The Commission's report, entitled "Personal Justice Denied," was published in 1983.

Americans of Japanese ancestry welcomed the study commission's thorough and intensive review of the circumstances surrounding their relocation and incarceration for period up to 4 years. The Commission's report revealed publicly and confirmed what they had always known: There was no military necessity for the mass evacuation and incarceration of Americans of Japanese ancestry, and that such action taken by the Federal Government was prompted by wartime hysteria, racism and the failure of political leadership.

Following the enemy attack on the United States Naval Base at Pearl Harbor on December 7, 1941, rumors of a Japanese attack on the U.S. mainland were rampant, and numerous false sightings of Japanese war planes off the West Coast were reported. A great wave of fear and hysteria swept the West Coast, where a relatively small population of Japanese Americans have for years been subjected to racial discrimination and often violent attacks.

Baseless charges of the existence of a fifth column and incidents of enemy espionage were published without any corroborative evidence at all. Indeed to this day, as the Commission pointed out, no proof of any acts of espionage or sabotage committed by Japanese Americans and legal residents of Japanese ancestry has ever been produced.

President Franklin D. Roosevelt, responding to the hysterical clamor against the Japanese Americans, on February 19, 1942, issued Executive Order 9066, which authorized the Secretary of War to designate military areas and to exclude any and all persons from such areas. Penalties for the violations of the military restrictions were subsequently established by Congress in Public Law 77-503, enacted in March of 1942.

Soon after the law went into effect, the military commander of the Western District, Lieutenant General John L. DeWitt, issued the first of a series of public proclamations establishing restrictive zones in eight western States, instituting a curfew applicable to enemy aliens and "persons of Japanese ancestry," and restricting the travel of Americans of Japanese ancestry and alien residents. One such proclamation prohibited American soldiers of Japanese ancestry, garbed in Uncle Sam's uniform, from entering the restricted zones. The first "Civilian Exclusion Order" was issued by General DeWitt on March 24, 1942, and marked the beginning of the relocation and internment of Japanese Americans and their alien parents.

Significantly, the Military Commander of the then-Territory of Hawaii, which had actually suffered an enemy attack and was under martial law, did not believe that it was necessary to evacuate Japanese Americans and their alien parents from Hawaii.

Moreover, FBI Director J. Edgar Hoover, who could hardly be accused of being soft on suspected spies, opposed the mass relocation and detention of Japanese Americans from Hawaii and the West Coast as well, pointing out that the FBI and other law enforcement agencies were capable of apprehending any saboteurs or enemy agents.

Japan's diplomats, consular officials and military attaches who were in the United States at the outbreak of the war were not rounded up and thrown into detention camps. On Hoover's orders they were confined to house arrest and treated with all due civility, because the FBI Director hoped that Americans in Japan would be treated in a similar manner. The Office of Naval Intelligence also opposed the mass evacuation and detention of Japanese Americans, citing the lack of any evidence of acts of espionage or sabotage committed by members of the Japanese American community.

Unfortunately, these voices of reason did not prevail and the question of relocation and incarceration of citizens of Japanese ancestry was never even discussed at the cabinet level here in Washington and no one strongly argued to President Roosevelt that such an action would be unconstitutional.

On April 13, 1943, while testifying before the U.S. House of Representatives Subcommittee on Naval Affairs, General DeWitt stated that:

> A Jap is a Jap. They are a dangerous element, whether loyal or not. There is no way to determine their loyalty. It makes no difference whether he is an American; theoretically he is still a Japanese, and you can't change him.

In recommending the relocation and detention of Japanese Americans to his superiors in Washington, D.C., General DeWitt stated:

> The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil (and) possessed of United States citizenship have become 'Americanized', the racial strains are undiluted.

General DeWitt's views were loudly echoed by many on the West Coast, in Congress and in the media. Although the Secretary of War and his deputy did not share DeWitt's racial views, and, indeed, tried to suppress them, they did not reject his proposed solution to the so-called Japanese American problem, cloaking it instead in the spurious guise of military necessity and adopting his argument that there just was not time for the FBI, military intelligence and local law enforcement agencies to identify and apprehend individuals suspected of spying and sabotage.

Of the 120,000 Japanese Americans ordered on 72 hours notice to pack only such belongings as they could hand carry, leave their homes and report to assembly centers prior to being moved to detention camps in the interior of the United States, most were children. According to the records of the War Relocation Authority, the largest group of internees were in their teens and many others were very young children. About 80 percent of the internees were native born American citizens, and the remainder, including many long-time residents, were first generation immigrants prohibited by our laws from becoming naturalized citizens of the United States.

All of them, citizens and resident aliens alike, were entitled to the full protection of the U.S. Constitution, but their constitutional rights were summarily denied without trial or hearing, without being charged, indicted or convicted of any crime, they were ordered into what can be described as American-style concentration camps surrounded by barbed wire fences, searchlights and armed guards.

During hearings of the Commission on Wartime Relocation and Internment of Civilians, former internees, many telling their stories for the first time, told of infants, young mothers and elderly persons who died for lack of adequate medical care and facilities; of families who were separated, with elderly parents or in-laws going to one camp while the married children were sent to another; of large families forced to live together in one small room; of the constant, nagging uncertainty about the future, both near and long-term; of the strains which this placed on their families; and most dramatically, of internees who were shot and killed by camp guards because they were inadvertently too close to the camp fences.

In one such incident an elderly man and his grandson were playing pitch-catch ball near the fence one afternoon. Under the camp rules no one was to be seen between the two barbed wire fences after 6 p.m. Although it was after 6 o'clock it was a summer day and still broad daylight when the incident occurred. The grandfather missed the ball and chased after it between the two fences and a guard over in the watchtower yelled "Get back!" The grandfather responded, "Oh, I am just going for the ball." The guard then fired his machine gun, killing the elderly gentleman right then and there.

It is also reported that one internee, an elderly American veteran of World War I, committed suicide because he was so ashamed of being branded as disloyal to the United States. Indeed, the stigma of disloyalty has haunted Japanese Americans for the past 45 years and it is one of the principal reasons that they are seeking Congressional action to remove that cloud over their heads.

S. 1009 would do just that. The sponsors of the bill do not pretend that history can be erased, but the measure would provide for the first time an official acknowledgment of the terrible injustice which was done, and it would provide token monetary compensation to those who suffered irreparable losses.

Mr. Chairman, perhaps of greatest significance is that S. 1009 would remove forever a longstanding blot on the Constitution of the United States and its passage will prove that our beloved country is great enough to acknowledge and correct is past mistakes.

Thank you very much.

Senator **Pryor**. Thank you, Senator Matsunaga, for that eloquent and moving statement.

Senator Inouye?

TESTIMONY OF HON. DANIEL INOUYE, U.S. SENATOR FROM THE STATE OF HAWAII

Senator **Inouye**. Mr. Chairman, I wish to join my distinguished colleague in thanking you for scheduling this hearing to receive testimony on this measure. I would also like to take this opportunity to commend my colleague and to thank him for authoring this measure and gathering 73 co-sponsors. As noted by you, Mr. Chairman, it is a feat that is not too often seen in the chamber of the Senate.

Mr. Chairman, many people have asked, and they continue to ask, why should we provide special treatment to the Japanese Americans? During wartime, do not all people suffer? These letters are received in my office almost daily. And, Mr. Chairman, while it is true that all people of a Nation at war suffer to a certain degree, the Japanese American internment experience is unprecedented in the history of civil rights deprivation.

Japanese Americans were incarcerated. They were forced to live in detention camps, as described by my distinguished colleague. They had no privacy and they were stripped of their freedom to move about as others could. They were arbitrarily branded disloyal, and Japanese Americans could not confront their accusers as all other Americans would have, or to bring their case before a jury. Japanese Americans wishing to fight for this country were initially declared ineligible. Once allowed to volunteer, they were restricted to serving in certain military units.

The individual payments acknowledge the unjust deprivation of liberty, the infliction of mental and physical suffering, and the stigma of being branded disloyal—losses not compensable under the Japanese Evacuation Claims Act of 1948.

Mr. Chairman, this is a forward looking bill benefiting future generations of Japanese Americans, as well as this Nation as a whole, through its educational goals. Plato once said: "The direction in which education starts a man will determine his future life."

The goal of this measure is to educate the people of this Nation to preclude this event from occurring again in the future. S. 1009 will fund research and public education activities on the causes and circumstances of relocation and internment, and comparative studies of civil liberties abuses and the effect of racial prejudice embodied by the Government action in times of national stress.

Rights guaranteed by the Constitution of the United States were sacrificed under the cloak of national security. Congress supported the President's policy of removal and detention by making the violation of orders issued pursuant to Executive Order 9066 a criminal offense. The United States Supreme Court also upheld exclusion in the context of war.

As noted by you and by my distinguished colleague, the Commission found no documented acts of espionage, sabotage or fifth column activity by any identifiable American citizen of Japanese ancestry or resident Japanese aliens on the West Coast. The Commission concluded that internment was motivated by "racial prejudice, war hysteria and a failure of political leadership."

The Commission further found that——

Widespread ignorance about Americans of Japanese descent contributed to a policy conceived in haste and executed in an atmosphere and anger at Japan.

The Government and society at large refused to recognize, and some still do refuse to recognize, the distinction between the Japanese who bombed Pearl Harbor and Japanese Americans and resident aliens of Japanese ancestry. A sign of the times was reflected by General John DeWitt's sentiment that my colleague quoted: "A Jap is a Jap."

Without the full educational benefit of the Japanese American experience, history may repeat itself, hiding behind a cloak of national security and persecuting Americans of a particular race for the actions committed by the people of an ancestral homeland. For example, it is not inconceivable that a possible future conflict with countries south of our border could arouse hostile feelings against hundreds of thousands of Hispanic Americans in this country.

What we learn through S. 1009 will determine the future of our constitutional freedoms. We must learn from the tragic injustice imposed upon the Japanese Americans and take all the necessary steps to assure that prejudice never again obscures our commitment to upholding the constitutional rights of all our people.

Mr. Chairman, I thank you for this opportunity.

Senator PRYOR. Thank you, Senator Inouye.

Senator Inouye, I should have asked you this in private a while ago, and I do not want to surprise you, and if you do not want to tell this story, do not tell it, just say you would rather not. I have heard you on one or two occasions tell a personal incident that happened to you just a few weeks after World War II in a barbershop, I believe, in San Francisco.

Would you rather not tell that?

Senator INOUYE. Well, it just reiterates our statement that unfortunately racial prejudice may be here to stay with all of us. I hope it is minimized. But this was soon after the end of World War II. I was proudly attired in my full uniform with four rows of ribbons and a Captain's bar on my shoulders, and I felt good. But I wanted a haircut before my parents saw me for the first time since I left them.

I walked into this barbershop. There were three empty chairs and no one in there. This fellow looked at me and says, "Are you a Jap." I said, "No, I am an American."

He says, "I am asking you. Are you a Jap." I said, "If you want to know if my parents were Japanese, my ancestry is Japanese, yes sir."

"We don't cut Jap hair."

I was tempted to break up the joint, but I thought better about it. At least, if I had done that, I do not suppose I would be here today. Unfortunately, that sentiment still exists in the United States. I am certain Senator Matsunaga receives the kind of mail that I receive ever so often, and now with the Iran/Contra hearings going on I receive an overabundance of that.

Senator PRYOR. Thank you, Senator Inouye, and thank you for sharing that story with us.

I am going to use the early-bird rule. Ladies and gentlemen, we have a rule in some of these Committees where, unless there is an objection, we do not call on Members by seniority, we call on them by when they arrive. And I believe our friend Senator Brock Adams from Washington State is next.

I am going to call on Senator Brock Adams at this time, but Brock, before I do call on you, if I may make a personal request of Senator Matsunaga, if he would be so kind as to join me at the dias, that would be certainly an honor for this Subcommittee to have you join us, Senator Matsunaga.

I have a second request for Senator Matsunaga. He knows that before this hearing I was not one of those 73 or 74 cosponsors of this bill. We have talked about this matter, but Senator Matsunaga, I hope that before the Senate adjourns for the afternoon you will permit and make certain that I become the 75th cosponsor of S. 1009.

[Applause.]

Senator MATSUNAGA. Without any objection whatsoever, it is so done.

Senator PRYOR. Senator Adams?

TESTIMONY OF HON. BROCK ADAMS, U.S. SENATOR FROM THE STATE OF WASHINGTON [1]

Senator ADAMS. Thank you, Mr. Chairman, and my honored and distinguished colleague, Senator Matsunaga.

It has been a pleasure to be a cosponsor of S. 1009. It was introduced by my old friend and colleague from both the House of Representatives and now in the Senate, Senator Matsunaga.

I do not approach this unemotionally, Mr. Chairman, because of the experience that I personally had with this, and I will mention that briefly in my remarks so that you understand the feelings that many of us have about it. I think it probably has never been understood by those that were not in the communities on the West Coast how deeply we missed everybody when they left, and how badly we feel people were treated. You are in the presence of genuine war heroes here with these two Senators from the famous 442. All of us in my State are aware of that and are desperately proud of them.

Mr. Chairman, I do not come to argue the fine points of the law because I think Senator Matsunaga has done that very well. I think Senator Inouye and Senator Matsunaga have described the wrenching indignity of mass incarceration, and I can tell you of enormous economic loss that people suffered for no reason in my home city of Seattle.

Homes were simply closed. They could not be sold to anybody. People picked them up for a price because their owners were gone. So that you understand, I was in Broadway High School during the 1940's and on one day at Broadway High School one-third of the student body left. They were of Japanese ancestry and they were moved without notice, without recourse.

For some of my fellow students, like Shig Murao and Joann Okamota, I do not know what became of them. I think, as was well stated by Senator Matsunaga, many of them felt they just did not want to come back. That was a tragedy for all of us.

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[1] See p. 75 for Senator Adams' prepared statement.

So as I sit here and as I ponder what was to me an enormous historic error in the United States, I am struck by the reasons why it is terribly important that this Committee, and later the Senate and the rest of the Congress pass this legislation. Many of the points have been well made by Senator Matsunaga, and certainly the Commission and the distinguished panels that you will hear will expound on each of these points.

But I would nonethless like to relate this from my own perspective. First, we could rest justification for this bill on a premise of unlawful and unconstitutional acts. When as legislators we say that lines will be drawn at a particular place, rules have been defined and have to be followed, but then we allow an objective standard to waver, under the pressure of human bias, subjectivity creeps in and we move into creating a dangerous precedent for each and every one of us.

In this particular case, I think it is safe to say that the objective standard in 1942 was utterly destroyed in an instant. In that summer and early fall, a mass roundup of citizens occurred, primarily Americans or their parents, without due process of law, warrants, trials or hearings.

Individuals like Mr. Gordon Hirabayashi, Mr. Fred Korematsu, Mr. William Hohri, who is present here today, and the late Mr. Min Yasui, are now seeking to correct a judicial interpretation of what occurred in those fateful years. That is a judicial interpretation, Mr. Chairman. Nevertheless, that will never compensate for what 120,000 citizens and resident aliens were forced to endure.

Second, redress, as it is defined in S. 1009, could be based on pure economic and emotional loss. In our area alone millions of dollars of farm property, fishing equipment, small businesses, homes, cars, furniture and other property were either left where they stood or were sold for a fraction of their real price.

The emotional loss was even more devastating. You just cannot measure the loss of dignity, the anger of injustice, and the fear of never seeing your family again. The suffering was immense and the loss was incalculable.

Or, third, this country could rest on the debt this country owes to those who served and died for freedoms that were ironically and categorically denied their own families. Nearly 33,000 Nisei, second generation Japanese Americans served in the military during World War II. Two of my colleagues who I have referred to and who are serving now in the Senate, along with other individuals who will be sitting on this panel, can better attest to the heroics and ultimate payments that they and their friends and comrades in arms made.

The Italian campaign alone was a classic case. And for those of you who have not read it, I recommend a reading of the history of the 442. Every time the hill could not be taken, the 442 was sent in. The casualties were enormous, and the casualties are apparent on the Senator who has left. He never mentions it and never would. I would have, but not if he were still here. But I know people have asked questions. That is what he means by the mail. Did he have an automobile accident? No, he lost that defending the United States of America in the 442.

All of these truths are more than adequate to support the passage of this important legislation. I want to be active in it, Senator Matsunaga, and I am more than just an interested cosponsor. The simple human emotions, the personal experience of a high school student watching friends and classmates driven from their homes and pulled out of their schools by U.S. Army troops, learning that their destination was the remote desert of the western United States, all contribute to my support of this bill.

Accordingly, in this end I come before you not only because of an inherent intellectual truth, but also what has to be effectively expressed by those of us who were left behind. The long time citizens of the State of Washington are coming to grips with their past. History cannot be unmade but mistakes can be acknowledged.

The Washington State Legislature, the City of Seattle, the Seattle School District have all passed forms of redress and reparations legislation. I am proud to say that with the assistance of people like Ms. Cherry Kinoshita, Mrs. Masi Tomita, and Mrs. Teresa Takiyoshi my State has moved in the direction of what is just and necessary.

As a local paper in the City of Spokane, Washington, recently stated:

> It is time to affirm our national character, right the wrong, erase the ugly precedent from our lawbooks and clear our collective American conscience.

I thank you, Mr. Chairman. I thank you, Senator Matsunaga, for introducing this, and all of you for allowing me to testify. I believe it is an historic and monumental bill.

Thank you, Mr. Chairman.

Senator **Pryor**. Senator Adams, thank you.

Senator **Adams**. Thank you, Senator Matsunaga, and I would ask to be excused, Mr. Chairman.

Senator **Pryor**. Thank you, Senator Adams.

Senator Murkowski, I believe was next. By the way, Senator Murkowski, your colleague, Senator Stevens of Alaska, called a few moments ago. He is in a Committee markup. He is going to break away as soon as he can to join you, but he wants his friends here to know that he is vitally interested and hopes that he can be here shortly.

Senator Murkowski of Alaska.

TESTIMONY OF HON. FRANK MURKOWSKI, U.S. SENATOR FROM THE STATE OF ALASKA [2]

Senator **Murkowski**. Thank you very much, Senator Pryor, and Alan, thank you. I appreciate being recognized. And my good friend, Senator Matsunaga from Hawaii, thank you, particularly, for the extraordinary commitment that you have made to this legislation as evidenced by the fact you have picked up your 75th cosponsor in the presence of our Chairman. That is most timely, Mr. Chairman, and most noteworthy, Senator Matsunaga.

The legislation to compensate the Americans who suffered injustice as a result of internment during World War II has been introduced, as you have noted, in three Congresses. As a consequence,

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[2] See p. 78 for Senator Murkowski's prepared statement.

Senator Matsunaga, of the 75 cosponsors, I think that there is indeed a strong indication that the will of the Congress must be carried out to pass this much-needed legislation and the effort will finally be successful.

Mr. Chairman, I intend to confine my remarks today to the Aleut compensation portion of the bill. I also support compensation for the Japanese Americans who were interned, and there are many other witnesses here, as well as some of my colleagues, who will testify specifically in support of those important sections of the bill.

I recall in southeastern Alaska when I was in the 4th grade the return of the Ohashi family returned from the internment camps—they had operated an ice cream store in Ketchikan—and the welcome the community gave that family, because they had given the community so much of themselves during the time that they made their home in Ketchikan, and the realization that they were back.

With regard to the Aleuts, Mr. Chairman, the Aleuts are residents of the Aleutian Islands, a very far off, wind swept 2,200 mile area of Alaska stretching almost to the Soviet Union. The Aleuts are a unique people of Alaska having migrated to the Aleutians thousands of years ago.

Now, it is beyond question that the Aleuts were Americans, just as the Japanese Americans were that were interned. They suffered personal and economic losses during their internment, but rather than generalizing about these losses I want to share with you today the experience of one of my constituents who is alive today, Mary Bourdukofski, because I think it is a specific example of how individuals were affected by this internment.

On a Sunday afternoon in 1941, Naval boats arrived off the coast of St. Paul Island, the village where Mary lived in Alaska. She lived there with her husband and two infant children. She was told on that day that the boats were there to evacuate the village residents from the island and that she could not take anything more than the personal gear that she was wearing and a suitcase of personal effects for her two infants.

I talked to Mary personally. She recalls vividly trying to put away the personal belongings of a lifetime, the antiques that she had inherited from her grandparents, belonging to her mother as well, but obviously having little or no time to do so. She was told to leave the house, not lock the door, and within 12 hours all 500 residents of St. Paul were evacuated, gone, aboard a Naval transport.

The boat then went to the island of St. George and did the same thing, moving from spot to spot, the little villages—tiny villages—picking up these people with no notice, and after 10 days on the boat, the 800 Aleut residents of the Aleutian Islands were taken to a southern part of Alaska, some 1,200 miles away to abandoned canneries and mines that had been shutdown in southeastern Alaska where they were put ashore and camps were established.

Mary describes the living conditions as abominable. The only running water in the Funter Bay camp where she was located was in a cannery mess hall. There were no rooms, no partitions. They had to establish blankets in the bunk houses for privacy, where they had to take care of their infants. There was no stove. They cooked their food in a common area. There were unsanitary conditions, inadequate shelters, and they lost 40 individuals at Funter Bay, mostly by tuberculosis because of lack of care.

After 2½ years of these living conditions Mary and the surviving Aleuts were returned to their villages. It is interesting to note what happened. When Mary got home she found that her home had been converted to a club house for the military installation that was there. The only items left in the house were a pool table, a dart board, and her stove. All of her personal effects were gone, including her mother's antiques, the family's lifetime personal mementos.

Mary's experience is not unique. There were approximately 800 residents of Alaska's Aleut community who suffered similar losses, and they are entitled to the compensation which we are contemplating. Of the 881 Aleuts interned 80 died and there are only about 400 living today. Many of those who died, died in the camps, Mr. Chairman.

Now, we look at the contribution this bill would make, $1.5 billion, to the Japanese Americans who were displaced. The portion covering the Aleuts amounts to approximately $45 million, which includes providing $12,000 to each of the 400 living Aleuts that are left today. Remember, Mr. Chairman, this happened 46 years ago. So I think the significance of just what this is going to mean to those people that are left, the realization that a portion of these funds are going to be available for restoration of the Russian Orthodox Churches that they had that were stripped, the loss of other artifacts that they have had is nothing more than a recognition of what is due to these people. It is certainly not anything extraordinary but is a modest contribution to offset the manner in which these people were displaced.

The compensation, Mr. Chairman, is a just compensation. The establishment of an Aleutian and Pribilof Islands Restitution Fund to compensate these small villages for the losses they have suffered is just. Authorization of the individual compensation of $12,000 each is reasonable. And in addition, the funding in the legislation to provide for clean up of the debris on some of the village islands is appropriate.

I had a personal experience, Mr. Chairman, as a youngster in southeastern Alaska, in Ketchikan where there was a camp established. It was a camp that was established for about 40 of the Aleuts and their families living in three bunk houses in an area that had been previously a CCC camp, Civilian Conservation Corps. There was great concern in the community about the conditions which these people were subjected to, the large number of tuberculosis cases, and the fact that they were so totally bewildered in their surroundings.

So as a consequence, Mr. Chairman, I would urge the Senate expeditiously proceed to consider this legislation. It should not be delayed any longer. I think in the case that I have outlined on the small village of St. Paul we have a typical instance of the significance of what the interment meant. It did not leave a temporary scar, Mr. Chairman. It left a permanent scar. It was unfortunate and it is time we rectify the situation.

I want to thank you for holding this hearing, Mr. Chairman. And I want to thank you, Senator Matsunaga, for your diligence in pursuing this legislation.

Senator **Pryor**. Thank you, Senator Murkowski.

Senator **Matsunaga**. Thank you for your support from the very beginning.

Senator **Pryor**. Senator Alan Cranston. We do not need to introduce you around here, Senator Cranston. Every one knows you, and we are proud to have you appear before our Subcommittee this afternoon.

TESTIMONY OF HON. ALAN CRANSTON, U.S. SENATOR FROM THE STATE OF CALIFORNIA [3]

Senator **Cranston**. Thank you very much, Senator David Pryor. I am delighted you are Chairman of this Subcommittee. I know that means that we will see some effective action.

Sparky Matsunaga, it is a great pleasure to appear before you and I praise you for your leadership in this matter and many others.

I am delighted to be here today to speak in support of S. 1009, legislation for redress of one of our Government's greatest acts of injustice. This legislation, which was introduced by our esteemed colleague Sparky Matsunaga on April 10, 1987, would implement the recommendations of the Commission on Wartime Relocation and Internment. I am delighted to note that this measure is currently sponsored by 74 members of the Senate, an overwhelming statement of support for this historic legislation.

My involvement in opposing the relocation of Japanese Americans dates back to the very beginning. Shortly after Pearl Harbor, I was assigned to the Office of War Information here in Washington, on Capitol Hill. There I worked closely with Archibald MacLeish, who headed that body, and with Eleanor Roosevelt down at the White House, trying to persuade President Roosevelt—dissuade him—from forcefully evacuating Japanese Americans from the west coast and interning them in so-called relocation camps.

Unfortunately for 120,000 Japanese Americans—and for the good name of our Nation—military authorities prevailed and the orders for internment were issued. More than two-thirds of the internees were American citizens. The rest were legal U.S. residents. After the internment process began I visited two of those camps, Tule Lake in California and Hart Mountain in Wyoming.

Recently, the children of internees visited Hart Mountain, trying to sense what their parents had felt. In part I can tell them. I spent four days inside the cold snow-covered barbed wire camp talking to internees, including a number of boyhood friends of mine from Los Altos. My friends and former classmates justifiably felt robbed of their citizenship.

One of my most poignant memories is of an intelligent and progressive-minded mother who was still managing—with some difficulty—to conceal from her 4-year old child the fact that they were prisoners in what most inmates considered a racial concentration camp. It was very ironic to see American Nisei soldiers home on furlough, clad in uniform, wandering around inside a fenced-in camp while they were visiting with their families. These Nisei soldiers returned from the battlefields of Europe as the most distinguished and decorated combat unit of the war, and from the Pacific theatre, as loyal soldiers and as officers in military intelligence.

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[3] See p. 82 for Senator Cranston's prepared statement.

I have never forgotten those impressions. In 1980, I was a cosponsor of the legislation establishing the Relocation Commission. The Commission report issued in 1983 amounted to our Government's official apology, 41 years overdue, to the internees and their families. It confirmed what a great many conscientious Americans have longed believed: These Americans of Japanese descent were clearly mistreated and their basic civil liberties violated, and fundamental principles of our country were violated.

The legislation you are considering today would redress this mass violation of civil liberties and compensate internees for their suffering. While the loss of liberty and the personal stigma attached to internment can never be erased, Federal reparations are a justifiable response to the legitimate financial losses incurred.

An independent study done for the Commission found the economic losses alone to evacuees ranged between $2.5 and $6.2 billion in today's dollar values, including interest for the past 40 years. Many consider this a very conservative estimate for the real economic losses of homes and other properties, stores and businesses. And these estimates do not begin to measure the personal hardships suffered by those who went through all of this.

This episode in American history should never have happened, and certainly it must never happen again. It is the Government's responsibility to set the record straight and to try, at least, to recognize and partially compensate for past injustices, although the tarnish on our Constitution will never be completely removed.

The purpose of S. 1009 is to recognize and redress the injustices and violations of civil liberties against U.S. citizens and U.S. residents of Japanese and Aleut ancestry by the United States and to discourage similar injustices and violations of civil liberties in the future.

It is long overdue. I urge you to move swiftly to approve S. 1009.

Thank you very much.

Senator PRYOR. Thank you, Senator Cranston. We appreciate very much your statement and your giving us a historical perspective that will enable this Subcommittee to move forward with this legislation. One of your colleagues from the House who has also been very, very supportive of this legislation is present at this hearing today.

He is in the audience. He has chosen not to make a statement—that is very rare for a politician, by the way—Congressman Norman Mineta. We appreciate Congressman Mineta being with us and giving his full support for this legislation.

Senator Matsunaga, do you wish to comment?

Senator MATSUNAGA. I wish to thank you, Senator Cranston, for being one of the first cosponsors and for having been one of the staunchest supporters of this measure from the very outset.

Senator CRANSTON. Thank you very much. I do not think I told you before about my early involvement.

Senator **Matsunaga**. No. This is the first time I have heard about your initial connection with this project.

Senator **Cranston**. Thank you very much.

Senator **Pryor**. Thank you, Senator Cranston.

Also, I have statement from Senator Daniel Evans of the State of Washington. He could not be present with us today. Without objection his statement will be printed in full in the record.[4]

Senator **Pryor**. In addition to Senator Evans' statement, we also have supportive statements of S. 1009 from the American Civil Liberties Union,[5] Friends Committee on National Legislation,[6] B'nai B'rith Anti-Defamation League,[7] the American Bar Association,[8] International Longshoremen's & Warehousemen Union,[9] and Mr. Angus MacBeth, the Council for the Commission on Wartime Internment.[10]

We ask unanimous consent that those statements be printed in the record.

In addition to those statements being placed in the record, to keep our record one of historical significance and for the future generations to rely on, I ask unanimous consent that an article written by Peter B. Sheridan, March 1984, appearing in the CRS Review be placed in the record.[11]

By the way, Senator Matsunaga, the General DeWitt order is here in this particular article by Mr. Sheridan, and I think that would be also of historical significance in the years to come.

We are ready now to call our first panel. One reason, not only because I like to be associated with Senator Matsunaga on many, many issues and like to work with him on matters, but selfishly I called him today to help chair this hearing because he might help me with some pronunciations of some of the names. I do apologize if I do not pronounce them absolutely correct.

In fact, I may just let Senator Matsunaga—or do you want me to try it? Do you want me to embarrass myself?

Senator **Matsunaga**. You go ahead. You are doing very well.

Senator **Pryor**. All right. From the Japanese-American Citizens League we have Harry Kajihara and Grayce Uyehara. And then my long-time friend, Michael Masaoka. I first met Mr. Masaoka at the Rohwer encampment almost 20 years ago when we dedicated our first monument. Mr. Masaoka is no stranger to this Committee or certainly to the Senate. He is President of the Go For Broke Nisei Veterans Association. Our third panelist is Mr. William Hohri, President of the National Council on Japanese-American Redress.

We look forward to the statements that you have. If possible, because we have now used 1 hour and 5 minutes and we do not want to cut you off, but we do urge you to say what you would like, keeping in mind, however, that your full statement will appear in the record.

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[4] See p. 277.
[5] See p. 318.
[6] See p. 375.
[7] See p. 330.
[8] See p. 303.
[9] See p. 387.
[10] See p. 405.
[11] See p. 434.

I believe our first two panelists are Mr. Kajihara and Ms. Uyehara.

TESTIMONY OF HARRY KAJIHARA, NATIONAL JACL PRESIDENT,[12] AND GRAYCE UYEHARA, EXECUTIVE DIRECTOR,[13] WASHINGTON OFFICE, JAPANESE-AMERICAN CITIZENS LEAGUE, LEGISLATIVE EDUCATION COMMITTEE; MIKE M. MASAOKA, PRESIDENT, GO FOR BROKE NISEI VETERANS ASSOCIATION;[14] AND WILLIAM HOHRI, PRESIDENT, NATIONAL COUNCIL ON JAPANESE-AMERICAN REDRESS [15]

Mr. KAJIHARA. Mr. Chairman, first of all, may I thank you for becoming the 75th cosponsor of the bill. That is not a part of my testimony.

Mr. Chairman, I am Harry Kajihara, National President of the Japanese American Citizens League. I appreciate the opportunity to testify in support of S. 1009, a bill to accept the findings and implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

Since 1983 the Japanese American Citizen League has been seeking passage of this important legislation. S. 1009 will serve as a lasting reminder of the injustice suffered by an entire ethnic group and will act as a deterrent to prevent such transgressions from ever happening again.

Let us celebrate the 200th year of our Nation's founding document by remedying this 45-year old injustice. Let us signal to the world that the United States does carry out the ideals embodied in our Constitution and the Bill of Rights.

Mr. Chairman, on behalf of the National Japanese American Citizens League I urge adoption of S. 1009. Thank you very much.

Senator PRYOR. Thank you.

Please proceed, Ms. Uyehara.

Ms. UYEHARA. Mr. Chairman, Senator Matsunaga, we thank you for scheduling this hearing and for this opportunity to testify in support of S. 1009. I am Grayce Kaneda Uyehara of West Chester, Pennsylvania. I am the Executive Director of the Japanese American Citizens League, Legislative Education Committee in Washington, D.C. I spent time in the Stockton Assembly Center and the Rohwer Relocation Center in Arkansas.

Jerry Enomoto, Chairman of the Board of JACL-LEC has sent his statement in support of S. 1009 to be part of our testimony.[16]

On behalf of our organization I want to thank the Senators who have taken the time today to come and testify in support of S. 1009. Minoru Yasui, who died last November at the age of 70, dedicated the last years of his life petitioning our Government to redress the grievances of Japanese Americans and appealing his *corum nobis* case with the hope of getting the Supreme Court to acknowledge that Executive Order 9066 was unconstitutional.

Each passing day diminishes the list of less than 60,000 survivors and the 120,000 who lost their individual freedom and dignity in totally un-American relocation centers. So in memory of Minoru Yasui and the 60,000 who are not here with us today, I quote W.H. Auden:

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[12] See p. 88 for Mr. Kajihara's prepared statement.

[13] See p. 94 for Ms. Uyehara's prepared statement.

[14] See p. 143 for Mr. Masaoka's prepared statement.

[15] See p. 240 for Mr. Hohri's prepared statement.

[16] See p. 120.

> We are left alone with our day and the time is short and history to the defeated may say, alas, but cannot help or pardon.

We hope that Auden's words will not be the epitaph to Executive Order 9066, which removed Japanese Americans from their homes and sent them to desolate desert areas of the west and to the swamps of Arkansas from 1942 to 1946. We hope that the legislators who guard our freedoms will recognize that the rights of everyone are jeopardized unless each individuals rights are protected.

The time has come to provide remedies to the Japanese Americans and to the Aleuts. The Magna Carta of 1215 was an inspiration behind the world's most enduring document, the Constitution of the United States. The following words are apropos to redress, quote:

> No free man shall be taken, outlawed, banished, in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land.

I will specifically address today questions and concerns raised by some legislators. The remedies as stated in the bill are appropriate. We are grateful for the leadership of Senator Spark Matsunaga of Hawaii for introducing this fine bill and for getting the high level of support we see today.

The first three remedial actions involve very few survivors, so I will pass over them. It is the trust fund of $1.3 billion and the individual payments of $20,000 out of it which require examination.

The first question is, what precedent is created by the legislation? In our judgement, none. The exclusion and detention of Japanese Americans will find no parallel in American history; a subversion of the Constitution by administrative fiat.

The second question is, what can Congress do to remedy the admission of gross miscarriage of justice? It is recognized that no amount of money can adequately compensate the Japanese Americans for the wrongs done to them. Yet, common law, the American people, and the Federal Government itself have made it a bedrock of our legal and political system that where Governments have cause substantial injury through the deprivation of liberty or other fundamental rights, remedies should be available to the damaged parties.

To put it another way, if not compensation that is specifically agreed, what then would anyone propose as meaningful? Expressions of regret, however sincere, will not do. The victims, the American way, and the Constitution are shamed.

Four questions about the propriety of monetary redress have been raised.

Did not the Evacuation Claims Act of 1948 pay for the losses suffered by the victims?

From about 20,000 claims, which required elaborate documentation of real losses, of the total claims of $148 million, $37 million was far from a fair settling of the accounts for the losses suffered.

The uncompensated losses have been placed between $1.2 billion and $6.2 billion. The Evacuation Claims Act provided nothing for the deprivation of liberty, which is at the center of the redress issue.

Will not the monetary remedy invite similar claims from other ethnic groups who were treated inhumanely and unjustly by our Government?

The payments are to be made only to those individuals who were victims of the Executive Order. This is an important point. No heirs are to receive payment, only those who are alive today who were themselves directly injured by the Federal Government because of their race or ethnicity.

Why should taxpayers today be held accountable for actions of our Government 45 years ago?

Some 60,000 of the 120,000 victims are still alive today. The payment is not for ancient wrongs. The question of whether the current generation is responsible for the action of the previous one is a moral one. We the people have a collective responsibility for the decisions of the past and present. Ongoing programs of the Federal Government assume legal obligations between past, present and future.

In the same context, I cite the action of the Federal Government of Germany for payments continued to this day to indemnify the survivors of the Nazi Holocaust.

Finally, why $20,000?

The symbolic payment to each surviving victim is like the story of Humpty-Dumpty. No monetary compensation can fully compensate or make the group whole again. The victims were economically, physically and emotionally broken from the tragedy of 1942. The payments are not to repair what cannot be repaired, but to make amends for damages which are not easily quantifiable into dollars and cents. So, without this symbolic payment, there is no redress.

Section 206 of the Civil Liberties Trust Fund addresses the remedy for damages to the Japanese American communities and to the Nation as a whole. The blackest chapter in our American history, when the Constitution was abrogated on the basis of race, must be included in the education of Americans. Otherwise, the same mistake can be repeated.

In conclusion, we believe that S. 1009 will pass. William Bradford Reynolds, Assistant Attorney General, said to the Federalist Society in January, quote:

> All of us in Government, officials of the Executive Branch, Congressmen, Judges have taken an oath to uphold the Constitution. This will sometimes mean making unpopular decisions, taking political heat and accepting accountability.

On behalf of the 60,000 survivors of the Executive Order 9066, we can now only turn to Congress and ask that you pass S. 1009 during the 100th Congress. Then the victims can joyfully join in celebrating the bicentennial of the Constitution.

Thank you, Mr. Chairman, for this great opportunity to testify today in behalf of S. 1009.

Senator PRYOR. May I ask a question? How long were you in the camp at Rohwer?

Ms. UYEHARA. I went in October. I am a free spirit, and I had already graduated college, but I had to get out, so I went to the snow of Minnesota in early March, and went with my spring clothes. Then I came back because the educational program did not meet my needs. Then I spent another 4 months working in the hospital. I also taught in the camp at the junior high school level.

Senator **Pryor**. But you were in the camp at Rohwer, Arkansas?

Ms. **Uyehara**. Yes.

Senator **Pryor**. For what period of time?

Ms. **Uyehara**. From October 1942 until the spring of 1943. Then I went out to Minnesota and came back again.

Senator **Pryor**. And you had just graduated from college? Now, were you from California?

Ms. **Uyehara**. Yes. I was born in Stockton, California.

Senator **Pryor**. You went from California to the camp in Minnesota?

Ms. **Uyehara**. Yes. I went to the assembly center in Stockton fairgrounds and then went to Rohwer.

Senator **Pryor**. After you were released from the camp and were given your freedom, so to speak, you went back to California?

Ms. **Uyehara**. No. I guess I felt that if a State did not want me, I was not going back. So I resettled—and I was the oldest daughter in the family—so we felt that in the City of Philadelphia the Quakers would be very supportive to help resettle my family, and they helped with the relocation of people who were coming from all the various centers.

Senator **Pryor**. But many of our colleagues and friends who were in these camps went back to their States of origin and places of origin to find nothing left there for them, was that not correct?

Ms. **Uyehara**. I imagine initially it would have been about half, but California was actually not open for a period of time. So that the majority did settle in the Midwest and on the eastern seaboard, and then some of those people did go back. But I do not have the count.

Senator **Pryor**. We are very honored to have Senator Ted Stevens, former Chairman of this Subcommittee, here. Senator Stevens, we have already announced that you had been detained, and they have been anxiously awaiting your arrival. So I am going to yield to you at this time, and then we will continue with the testimony of our witnesses on this panel.

Senator **Stevens**. Thank you for your courtesy. I have just left the Joint Committee on Printing. I apologize to you and the Members of Congress who appeared before. I am happy to be here with my good friends from Hawaii. I see once again the people who have testified on this bill before.

I am hopeful that we now have the ability to start moving this legislation along, because as I said once before, Mr. Chairman, the circle is closing. The people who are going to be affected by it are, with the passage of time, reducing in numbers. I congratulate you for holding the hearing and I am sorry I was not here at the beginning.

I do have a request about a statement that I will make later.

Senator **Pryor**. Mr. Masaoka.

Mr. **Masaoka**. Thank you, Mr. Chairman.

Senator **Pryor**. We welcome you to the Subcommittee today.

Mr. **Masaoka**. I am very pleased to join my colleagues Senator Matsunaga and Senator Inouye in urging enactment of this legislation.

It happens that by fate I perhaps am more involved in many of the incidents involved in this whole incident than any other living Japanese American. I was the National Secretary of the Japanese American Citizens League at the time these great decisions were made. I was the one who came and tried to persuade the President and the Secretary of War to allow us to volunteer to fight in the same Army that had put us in camp.

After I returned from the war, in which a brother died—as a matter of fact, four of my brothers were in the combat team with me. We are, perhaps, the only American family with five sons in combat in the same unit at the same time.

After that I came back here and I started lobbying, if you will, for those things which we hoped to do to make good some of the injustices. As a matter of fact, this morning after the House Judiciary Committee voted 28 to 6 to report the companion bill to the bill which Senator Matsunaga introduced, Congressman Rodino said, well, Mike, I remember you first came to see me in 1949 and you were telling me then that something ought to be done. He said, thank God this time we have got a chance.

It is with that spirit that I come. As my name indicates, I am an Irishman. I have had a blood transfusion from the Irishmen overseas, so I may tend to be verbose. I have written a rather lengthy statement—some 100 pages—which gives the complete background of this whole thing in question and answer form. I am not going to go through them all.

I would like to point out that some of the questions are, like: Why not ask Japan, since Japan started the war, to compensate us? Why in a war where all Americans suffered should only the Japanese American be compensated? Did not the Supreme Court find the evacuation to be constitutional, so why should we compensate the Japanese?

I have questions about the military intelligence service and all of these other things, like: Did not the Japanese Americans cooperate with the Army? And did not the Japanese Americans cooperate in a sense in their own incarceration in the camps?

I hope to answer these and 19 questions which I would like to submit for the record, Mr. Chairman.

Senator **Pryor**. Without objection.

Mr. **Masaoka**. I have decided today, because of the lack of time, to take up something that most of you may be familiar with. This is a letter in which in boldface it says:

> This letter has been mailed to every United States Senator and Congressman plus the print and broadcast media and wire services.

It happens to be a letter over the stationery of Dr. S. I. Hayakawa, a Senator from the State of California who retired. He is joined by two former intelligence officers, Edgar Doleman and David Lowman, both of Hawaii. I think with your permission I would like to go through these questions and answer them rather rapidly to indicate the kinds of things that we hear so often, not to answer all of the questions, but some of the inferences which are made, some of the inaccuracies.

Some of the misleading statements I think need to be commented upon because so many Americans have been receiving this letter, as did every member of Congress. I would like to discuss them with you to try to illustrate the kind of problems we have in selling our meritorious bill.

First of all it says, do you know that 112,000, not 120,000 residents of Japanese ancestry evacuated from the west coast. Obviously, this notation of 112,000, not 120,000 is to try to indicate that the information which you have been receiving has been inaccurate. Last night I checked it, and according to the latest report of the WRA, 123,000 people were evacuated. So even they are wrong in this.

And then the statement goes along to say: "We were evacuated along with all non-Japanese alien enemies."

This is completely wrong, because one of our greatest criticisms of this evacuation was that German and Italian aliens—enemy aliens by the way—were not interned and they were not evacuated and sent to camp with us.

Then Mr. Hayakawa says that over 40 percent of the Japanese group were enemy agents, inferring somehow that maybe there is a question of loyalty, a question of not being completely pro-American minded in these 40 percent enemy aliens. I happen to know former Senator Hayakawa quite well. He writes here that he is a special advisor to the U.S. Secretary of State. We called the Secretary's office last Monday. We inquired whether Dr. Hayakawa was now a member of any advisory or consultancy group. He was not.

The important thing is that Dr. Hayakawa was an enemy alien himself and yet he slanders, if you will, his fellow enemy aliens of Japanese ancestry who went to camp. Dr. Hayakawa was a citizen of Canada who during World War II was an instructor at the Illinois Institute of Technology in Chicago.

He is most famous as a semanticist. Before the war he wrote a book which is called "Language in Action." As we read this, we somehow cannot understand some of his language, because Senator Hayakawa should know that every one of the so-called Japanese enemy aliens were enemy aliens because they could not become citizens of the United States. Germans and Italian aliens could, but under our racist immigration laws at that time they could not become naturalized citizens.

Senator Hayakawa should know that because he did not become a citizen of the United States until 1952 when the Walter/McCarran Immigration and Nationality Act was passed. So at the time he disparages enemy aliens of Japanese ancestry in camp, he was one of them.

But what kind of enemy aliens did we have in camp? Many of them served the United States even though they were citizens and subjects, nationals of enemy Japan. For example, we know that quite a number went out and trained white Americans to speak and read and write Japanese so that they could operate against the Japanese enemy.

In fact, my father-in-law, Congressman Mineta's father, left the camp at Hart Mountain, went to the University of Chicago and there in the Army specialized training program taught white Americans to go out against the Japanese enemy. And by sheer coincidence, perhaps, the present Assistant Secretary of State for Near East and Pacific Affairs was one of his students, Gaston Sigur.

Another group of enemy aliens, like Senator Hayakawa, served with the Office of Strategic Service. They went overseas and they performed tremendous duties, like Andrew Kuroda here of Washington, D.C. He did such important work that his activities are still classified, although many of us suspect that he was dropped behind Japanese lines and came back with intelligence of the country of his citizenship to give to the United States.

People like Andrew Kuroda became citizens of the United States because of a special act of Congress. There were other enemy aliens of Japanese ancestry who drew the maps which bombed Tokyo and all the industrial areas, and I have the suspicion that they also drew the maps by which the atom bombs were dropped on Hiroshima and Nagasaki.

And the fourth category of enemy aliens were those who were interpreters and translators. These were Japanese aliens who went to the forward areas, saw all of the captured documents from the Japanese, translated them, made them understandable, and contributed to the war to such an extent that General Willoughby, the Chief of Intelligence for General MacArthur said that they shortened the war by at least 2 years without any consideration of an atomic bomb.

They saved billions of dollars and millions of American casualties. These are the gentlemen among the 40,000 enemy aliens that are disparaged in this particular note.

Then the next paragraph—paragraph 2—goes on to say, the Supreme Court ruled the exclusion constitutional and therefore nothing can be done about it. The Supreme Court in the United States, yes, did rule the evacuation constitutional as of that time and of those circumstances. None of the Supreme Court cases said that Congress did not have the right to redress Japanese Americans and alien Japanese if they so desired, or that Congress was denied the opportunity to provide compensation for these people, as the present bill, S. 1009 does. So there is nothing unconstitutional that is being proposed by the members of Congress today.

Third is something that Senator Matsunaga, Senator Inouye and the rest of us have been fighting for years, the charge that a large number of Japanese Americans were kind of in a network of spies for Japan. All the records, the latest records, indicate that this was not true. The Navy intelligence said it was not so. The FBI said it was not so. Even the Army general staff under General Mark Clark testified that evacuation was not necessary.

The Federal Communications Authority said that there was no signaling between enemy submarines and ours, and the State Department had their own special apparatus for checking on the loyalty of Japanese Americans. None of these found a single incident. As a matter of fact, when they talk about the magic cables and all of that, they are talking about contingency plans of the Japanese Government.

A lot of contingency plans are made by the Government and they are never carried out, but they are there. For example, here in the United States our Government had a contingency plan to put Japanese Americans in concentration camps and exchange them for prisoners of war of Japan.

Another contingency plan was that we would take Japanese from the central and southern Latin American States and exchange them for prisoners of war. Another one would go so far as to sterilize, if you will, young Japanese men. I am sure that Senator Matsunaga is familiar with the famous Patton plan under which Colonel Patton, then a relative young Army officer in Hawaii before World War II, had a complete program for what he was going to do with the Japanese in case of war.

None of these materialized but they were plans, and I suppose you could read them. I would suggest that everything and every documentation which we have, including the documentation before the Congress of the United States, indicates that there was not a single act—not a single act—of espionage or sabotage by a resident alien or a citizen of Japanese ancestry before, during and after World War II.

I say to these people who say they read rumors about this, they know about that, if that is the case, why do not they come forward, provide that information to the Government authorities and let these people be tried for treason, because there is absolutely no statute of limitations on treason as far as I know.

I would like to see these people who keep reporting the rumors and so on of these suspicious of World War II come forth. If they cannot produce the documentation necessary, let's forget that argument.

Paragraphs 4 and 5 have something to do more or less about the general situation, so let me jump to number 6, in which these gentlemen say, each WRA center had facilities of a small town, they even had graduation with gowns and all.

If these camps were so wonderful, where was Senator Hayakawa? He had to endure, if you will, the hardships of wartime Chicago. He had to live with all the rations and so on. Give them up. If life in these WRA camps was so wonderful, he should have come and been with us and received compensation in the amount of $12, $16, and $19 a month, as we did, living in a kind of penitentiary atmosphere as Chief Judge William Denman of the 9th Circuit Court of Appeals said in releasing certain Japanese Americans who were accused of acting improperly in camp.

Senator Hayakawa then indulges in some inconsistency. In statement 7 he says, hundreds of resident Japanese Americans residing in States unaffected by this executive military order asked for and were granted permission to enter and reside in the centers for the duration of the war. That is true, because lots of families had members going to school or working outside the western coast. These people returned to be with their families.

Others had been out on farm work, helping harvest for victory. They came back. But interestingly enough, in the next statement he says, 35,000 resident Japanese Americans left the centers for new jobs and new homes and 4,000 more left to attend colleges and universities.

The Senator and his colleagues cannot have it both ways. Either the camps were so bad that people wanted to leave, or they were so good that a number came to live there. If you look at the statistics, the great majority—the overwhelming majority—wanted to leave. Many more could not because of leave requirements.

Now, this is one that I am sure Senator Matsunaga and I will have a lot of fun with. The allegation is made that of the 10,000 AJAs, Americans of Japanese ancestry, residing in the WRA centers and eligible for military service during World War II, only 1,208 volunteered. That is right, but why? We were insulted. During the war the Army decided they did not want us in the service. Selective Service would not induct us. And Selective Service reclassified us in the same category, 4-C, as enemy aliens. Can you imagine?

And one of the jobs that I had was to try to persuade Secretary Stimson, John McCloy and others to give us a chance to serve. They did give us a chance, and only 1,208 volunteered. But the facts are not clear here. Why did more not volunteer from the camps? Simply because a lot of people were like my brothers. I had one brother who volunteered. He had left camp to work in the harvest fields of Idaho. He volunteered.

Another brother was in Nebraska working in the meat packing markets there. He volunteered. I had another brother in Ogden, Utah, working on the railroad. He volunteered. My fourth brother was already in the military service but he volunteered from South Carolina to join us.

There were a lot of people like that and the important thing is that later in the same year, a little bit after this period in which they mention the figure 1,208, the Selective Service, because of the outstanding record of the 100th infantry and the 442 in military training restored Selective Service to Japanese Americans.

After that, if you will look at the final report of the Selective Service system issued in 1952 you will find that 33,000-plus Americans of Japanese ancestry served in the armies of the United States, about one-half from Hawaii and the other half from the mainland, certainly much larger than the 1,208 who volunteered.

Finally, he talks about if this kind of bill passes we are going to compensate 6,000 children born in relocation centers. Can you imagine this? 6,000 children who were born with the stigma of being born in prison camps, and we deny to them a little solatium in the amount of $20,000.

Then he says we are compensating thousands of enemy aliens who could have been legally interned and their properties confiscated. That is right. Senator Hayakawa is among those. But all of those who were interned, both under the WRA camp system and under the Department of Justice, the FBI check system, all of them with the exception of three, I think, were cleared by hearing boards.

One of the hearing boards, by the way, was chaired by the distinguished former Majority Leader of the Senate, Mike Mansfield, now ambassador to Japan. He was the one who told me that he wondered why we were not given—we citizens were not given—individual hearing rights, but enemy aliens against whom the FBI had suspicions of possible disloyalty, they got those hearings.

But the fact remains that they are going to be compensated, because they have been cleared of disloyalty and as I have indicated, many of them served the United States, people like Mr. Mineta, a citizen of Japan. If he had been captured by the Japanese how would he have been treated? He was not an American citizen.

Or even worse, Andy Kuroda. If he were caught behind Japanese lines, what do you think his fate would be? Are you going to deprive these people of this sum?

Then we are given the figure of 5,000 in camp who renounced their citizenship. Nothing is mentioned that in court cases all but about 400 had their citizenship restored. And I venture that by this time all the remainders have. Not one of this group or the so-called repatriates who went back to Japan were ever accused of any crime, and those who were repatriates were so old since they had to come into the United States before December 1924 when the exclusion act went into effect.

So they were in their 50's and 60's at the time of evacuation. If they went back to Japan they are probably dead now. Those who went to accompany their parents, they were under the age of 15 and they constituted more than 20 percent of the so-called repatriates.

Well, so much for this, but there is one other thing that I would like to mention here because we get so much of it. They talk about this highly organized Japanese American lobby. Here you see on this panel of four, this highly organized Japanese American lobby. I think they are trying to use prejudicial words and terms and trying to get the American public confused with the great Japan business lobby in Washington, which is one of the biggest and most effective.

What you have here is a case of a retired social worker and housewife who commutes from Philadelphia here three or four times a week and on a part-time basis works with two others to put this program through. Great deal.

I represent the Nisei Veterans. I am completely pro bono on this particular project. We have their support. They are all for this. But I do this work on my own. My faithful secretary, Mary Toda, types these statements out. Then out of my own pocket I pay for all the printing that is necessary.

Why do I do this? Because so many of my friends that died overseas volunteered because I urged them to, Senator, and I feel I owe them a debt and I am paying part of that debt.

Finally, I would like to pay a special tribute. You have paid your tribute to Spark Matsunaga. I would like to pay mine, too, because I think, as you pointed out, it is amazing and unprecedented that one person with his sheer dedication and persuasiveness could get so many people behind legislation, even if that legislation is as meritorious as this.

Spark is an unusual guy, as you know. He works hard. He is resourceful. He is a very compassionate man. He introduced legislation that became the Peace Academy. He has written a book about Soviet-American cooperation in space. But more importantly, he is the only man I know of who served in all three great Japanese American units during World War II.

First he was with the 100th Infantry Battalion that came over from Hawaii. Then he was with the 442nd Regimental Combat Team which absorbed the 100th. Wounded twice, he had to be furloughed home to the United States and he went into the third branch, the Military Intelligence Service. And what did he do? He performed his active military service and on off hours he visited over 200 American communities in the midwest urging the people when the Japanese evacuees come out of camp, please help them find homes and employment.

That is the kind of man Spark Matsunaga is. You and I know that. And if he is behind this legislation, it has got to be good.

Senator **Matsunaga**. I think it is time he wound it up. [Laughter.]

Mr. **Masaoka**. I would like to wind it up by saying this. In this 200th anniversary year of the Constitution of the United States, I think the Congress of the United States in its 100th Congress has the opportunity to right that magnificent record of human rights and democracy in action. And therefore, Mr. Chairman, I am pleased and delighted for the opportunity to be heard.

I remind you again, if you will, of that hot day in July in the bottomlands of the Mississippi River in Rohwer, near Little Rock, you, Mr. Chairman, and I stood side by side as we paid tribute to people who had volunteered from relocation camps behind barbed wire fences into which the same army for which they were volunteering put them. None of them returned, and you and I dedicated that memorial.

Ever since that I have had a special feeling that you understood our problems and sympathized with us.

Thank you very much.

Senator **Pryor**. Thank you, Mr. Masaoka.

I have a statement for the record relative to Senator Hayakawa's letter, and I think it would be appropriate at this point. Staff advises me that all of the allegations raised against the Japanese Americans were raised before the Commission on Wartime Internment and Relocation. Notwithstanding this, the Commission recommended that we proceed with concepts as Senator Matsunaga has included in S. 1009. That is the first statement.

The second statement is, in preparation for this day's hearing, after public notice was given to all of the media and all of the groups concerned, staff advises me that Senator Hayakawa, or no one representing Senator Hayakawa, ever requested this Committee to let him come forward and testify as you have testified.

I wanted the record to reflect this.

Mr. **Masaoka**. Thank you, sir.

Senator **Pryor**. Senator Stevens?

Senator **Stevens**. Mr. Chairman, I am reluctant to say this, but I give you my background, Mr. Masaoka. I was raised in the east and went to California about 3 years before the war and the high school I went to was 65 percent Japanese. I remember Pearl Harbor day very well. Soon thereafter they all left.

I have been appalled about it ever since. When I moved to Alaska I found an even worse situation, in my judgment. But Sam is one of my great friends and I think you and your colleagues ought to be advised not to tilt at windmills.

Sam has lots of friends out there on the floor of the Senate and what you have just said is going to make it very difficult for me to get this bill that I cosponsored through the Senate. I think you ought to calm down a little bit. Sam is not out there on the floor, but you will have someone speaking for Sam out on the floor if this keeps up.

Senator PRYOR. Mr. Hohri, we look forward to hearing your statement.

Mr. HOHRI. Mr. Chairman, Senator Stevens, Senator Matsunaga, thank you. I appreciate your invitation to me to speak on behalf of the National Council for Japanese American Redress and as the lead named plaintiff in the court case of *William Hohri et al.* v. *the United States.*

I have read S. 1009. I am pleased to recommend its enactment. Even though our organization's focus is on the courts, I believe I speak for most of our supporters in urging Congress to redress the grievances of the victims of our wartime program of mass exclusion and detention.

The responsibility for this grave injustice rests with all three branches of Government. Despite the separation of powers we have seen the Congress and the courts interact on the issue of Japanese American redress. After almost 2 years of preparation we filed our lawsuit in March, 1983 in the U.S. District Court for the District of Columbia.

Our arguments relied on findings of the Commission on Wartime Relocation and Internment of Civilians, as well as on our own legal and historical research. In May 1984 while we prevailed on several issues, our case was dismissed due to the statute of limitations. We, of course, appealed.

In January 1986 the U.S. Court of Appeals for the District of Columbia Circuit tolled the statute of limitations to July 31, 1980, the date of the establishment of the same Commission. Our case was remanded to trial.

Both sides appealed to the Supreme Court. The Government's appeal was accepted while ours was left pending. On the first day of this month the Supreme Court vacated the Appeals Court decision and remanded our case with instructions to transfer our appeal to the U.S. Court of Appeals for the Federal Circuit.

In 1982, while we were preparing our court complaint, Congress enacted the Federal Courts Improvement Act and created this new forum for certain appeals. Our case is now back to square 2, the first level of appeal. Though the Court's decision is a disappointment, we will continue to seek a judicial resolution of the legal and constitutional issues created by our wartime exclusion and detention.

As an aside, I hope that Congress will clarify the ambiguities of that portion of the 1982 Federal Courts Improvement Act that caused this unfortunate delay.

Clearly then, the separate powers, while not intervening, do interact. While our focus is on the courts, I do have comments on three parts of S. 1009. I strongly support the proposed apology. It complements our request for a declaration from the courts that mass exclusion and detention were illegal and unconstitutional.

I would like, respectfully, to request one alteration. On line 7 of page 6, please consider substituting the word "exclusion" for "relocation." Since evacuation is used, relocation seems redundant. Moreover, around 5,000 persons were excluded from their homes and communities in the coastal region and forced to move inland even though they were never interned.

Also, exclusion orders were issued for each camp site to provide a legal basis for confinement within each camps perimeter. If an inmate crossed the perimeter, he or she would trespass into an exclusion zone and be subject to arrest. By the Government's own admission, military necessity did not apply.

Perhaps the meanest use of exclusion, earlier mentioned by Senator Matsunaga, occurred in May 1942 when General DeWitt initiated an order that excluded Japanese American soldiers on furlough from the western States. Fortunately, this insult lasted only 11 months rather than 3 years. Surely such excesses require an apology.

I would like to have clarified a potentially ambiguous phrase on page 10, line 20. I respectfully suggest that "against the United States" be replaced with "for payments under this Act." Thus, the statement would read: "The claims of an eligible individual for payments under this Act shall be extinguished."

My concern here is that the present wording may lead to some confusion in our court action. I am sure there is no intent in this phrase to cross the barrier of the separation of powers. This suggested change would remove such unintended interpretation.

Also, I strongly support the widest distribution of the hearings and findings of the Commission. I would respectfully suggest that you consider modifying paragraph 3 on page 11 of the bill to read:

> To have published the hearings and findings of the Commission and to promote their distributions to schools, book sellers and libraries.

The transcripts of the Commission's hearings were never published. The Commission's staff, plus some dedicated volunteers, did manage to edit their several thousand pages. These pages were waiting to be printed at the U.S. Government Printing Office when the Commission's term expired.

Throughout its 1981 hearings the Commission repeatedly promised the witnesses who appeared that their testimonies would go into the record. This record has yet to be published. I think we should make certain it does through this bill.

I conclude by noting that we have read press clippings on our Supreme Court case. They reflect widespread and growing public interest in and, I believe, support for Japanese American redress. We even made the pages of the Daily Mining Gazette of Houghton, Michigan. Perhaps the most unintentionally humorous and telling comment I heard was on a San Antonio, Texas, radio call-in show from a rather hostile, elderly man who explained, "You Japanese have changed since World War II."

Well, I do not think I have suffered any noticeable genetic changes in my life, but I think we as a Nation have grown up.

Thank you.

Senator **Pryor**. Mr. Hohri, I thank you.

Questions, Senator Matsunaga?

Senator **Matsunaga**. No. I just wish to thank you, Mr. Hohri, Mr. Kajihara, Ms. Uyehara and Mr. Masaoka for your wonderful testimony; taking time out to come out in support of my bill. You have made it so much easier for this Committee to report out the bill, which the House has already done, the House Judiciary Committee, that is.

Thank you ever so much.

Senator **Pryor**. Senator Stevens?

Senator **Stevens**. I thank you for your statement and I commend you for pursuing your rights so well in court. You are back at square 2, but it is not square 1. I mean, you are still a little bit ahead of the game.

Mr. **Hohri**. Yes. I think we are going to get back to square 3, and maybe square 4.

Senator **Stevens**. Well, you have done a very good job and have been very persistent and we thank you for that.

Mr. **Hohri**. Thank you.

Senator **Pryor**. May I ask one question for clarification. I am sorry, I had to be out of the Committee room for a moment.

Would the compensation that each of the survivors would receive, roughly 60,000 of them, would it preclude compensation to those individuals should the class action suit be successful? I do not quite understand this.

Mr. **Hohri**. One of the things that has yet to be determined which is very critical but will not be determined until we reach the trial stage—right now we are going through a lot of procedural arguments because this is the Government's best defense is to try to keep us from going to trial—I think once we go to trial the Government recognizes that they have a rather weak case. But once we go to trial, one of the first things that has to be done is the certification of the class.

In that process the court has to decide who will be included and who will be excluded. At that time, if there is legislation enacted, that may have some effect on who is included or who is excluded, or what the amount shall be. For example, if the courts awarded, say, $100,000 to every person, maybe there would be a set off from whatever the Congress legislated. But that is something that has to wait until we get to trial, if we get to trial.

Senator **Matsunaga**. I may say, Mr. Chairman, that there is a specific provision in the bill S. 1009 that in order to receive compensation under the bill as provided, the claimant must forego all other claims, including claims through court action.

Mr. **Hohri**. I wonder if you could identify that for us.

Senator **Matsunaga**. There is a provision here.

Mr. **Masaoka**. I think that is section 19. Page 10, line 19.

Senator **Matsunaga**. Yes, it reads:

> The claims of an eligible individual against the United States shall be extinguished on a date which is ten years after the date of the enactment of this Act or (2) on the date by which the individual has received the total amount of payments under this Act.

So that would mean that the claimant would take himself or herself out of the class action suit.

Mr. **Hohri**. We have a question, if I might ask, about that phrasing, because that also sets a statute of limitation of 10 years from the date of enactment of this Act, and we were wondering whether that also sets a statute of limitation for our lawsuit?

Senator MATSUNAGA. It would be confined to the legislative action. That is, here again we have separation. So my interpretation is that the claims of an eligible individual against the United States shall be extinguished on a date which is 10 years after the date of enactment of this Act.

I suppose once your court action is declared to be within the statute of limitations because it was in 1982, was it not, it was determined that——

Mr. HOHRI. 1980.

Senator MATSUNAGA [continuing]. 1980 that material evidence had been withheld by the Government. So actually the statute of limitations started in 1980.

Mr. HOHRI. Yes.

Senator MATSUNAGA. But, in fact, this would extend it beyond that.

Mr. HOHRI. What would happen if our lawsuit were successful and this legislation were passed afterwards?

Senator MATSUNAGA. Then, of course, the class action suit would prevail. But the recipients, of course, if they wished to make a claim under this Act, would have to forego any claim under the class action suit.

Mr. HOHRI. Or if they had received money under the class action suit, they would then forego compensation under this Act; is that correct?

Senator MATSUNAGA. Yes. I would definitely think so.

Mr. HOHRI. Then I think that I would strongly recommend the change in wording that I did recommend.

Senator MATSUNAGA. We might clarify that, either in the actual language of the bill itself or by report language.

Mr. HOHRI. Thank you.

Senator PRYOR. Mr. Hohri, as we call ourselves down in Arkansas—I am just a shade tree lawyer. I sit between two graduates of the Harvard Law School, so I am not going to involve myself in this debate right now. I used to defend hog thieves and chicken thieves and the people like that down there, and that was the type of law practice I bet was not in the makeup of their practice. [Laughter.]

Just as a final comment, this has been a very good panel. Let me, if I might, say a word about Senator Matsunaga. My very best friend in the U.S. Senate happens to be the senior Senator from our State, Senator Dale Bumpers. He is my very good and close friend.

Senator Bumpers and I, when we go before an Arkansas audience together, try to outdo one another on seeing who can give the other the most flowery introduction. Senator Bumpers now has got a line something like this. He says, "Ladies and gentlemen, next to the Senator from Hawaii, Senator Matsunaga, and Senator Inouye of Hawaii, old David Pryor may be the best liked guy in the Senate."

Well, we know that that is a lie. Of course, Senators Matsunaga and Inouye are, definitely, the best liked people in the Senate. But Dale and I laugh about that very often. But just to be associated with anyone like Senators Matsunaga and Inouye, I think, is to be associated with the very best and for that I am very, very complimented.

I do not know of another Senator who could have taken this piece of legislation and moved it so far. I do now know of another Senator who could have gotten such a cross section of support. If you will look at these 75 cosponsors, you will see from the most liberal to the most conservative, Democrats and Republicans alike, and that is not easy to do.

I have tried to get sponsors on legislation. It is not easy to do, especially if it is legislation that might set a precedent or might cause controversy, for this Senator Matsunaga should be commended, and I think those commendations to him today are more than justified.

Our next panel will consist of Mr. John Kirtland, Special Counsel, Bishop, Cook, Purcell & Reynolds, Mr. Agafon Krukoff, who is President of the Aleut Corporation, and Mr. Dimitri Philemonof, Executive Director of the Aleutian/Pribilof Islands Association, Inc.

Senator STEVENS. Mr. Chairman, would you allow me?

Senator PRYOR. Certainly, Senator Stevens.

Senator STEVENS. Again, I am sad that I did not get here for the beginning of the hearing, but I want to get a little bit of perspective here.

My friends—and they are my good friends—represent people who come from an area west of Hawaii. Most people do not get that in focus. If you drop a plumb line from Anchorage due south you go through Honolulu. These people represent the Aleutian Islands people who were affected by another action in World War II.

It is 2,400 miles west of Anchorage before you reach the end of that Aleutian chain. I think it is hard sometimes for people to understand why it was the Federal Government felt moved to do what they did to these people, and I urge everyone to listen to it. As I say, I think it is one of the strangest things that has happened in American history.

But they are truly westerners and my good friend Senator Matsunaga is really a southeasterner as far as we are concerned. I am glad to be here when they are here and they did make a record once before.

I have asked them because of the timeframe of a vote at 5 o'clock to be cognizant of that.

Senator PRYOR. Mr. Kirtland.

TESTIMONY OF JOHN KIRTLAND,[17] SPECIAL COUNSEL, BISHOP, COOK, PURCELL & REYNOLDS; AGAFON KRUKOFF, JR.,[18] PRESIDENT, THE ALEUT CORP.; AND DIMITRI PHILEMONOF,[19] EXECUTIVE DIRECTOR, ALEUTIAN/PRIBILOF ISLANDS ASSOCIATION, INC.

Mr. KIRTLAND. Thank you, Mr. Chairman and Senator Stevens. My name is John C. Kirtland. I practice law in Washington, D.C., and have represented the Aleut people of Alaska for nearly 91/2 years in their efforts to obtain redress for the injustices they suffered at the hands of the United States Government in World War II.

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[17] See p. 242 for Mr. Kirtland's prepared statement.

[18] See p. 285 for Mr. Krukoff's prepared statement.

[19] See p. 270 for Mr. Philemonof's prepared statement.

The bill before you, S. 1009, accepts the findings and implements the recommendations of the Commission, as we have discussed. That Commission held extensive hearings in Anchorage, Unalaska, and St. Paul Island in Alaska. The Commission, whose Alaska hearings were chaired by former Justice Arthur Goldberg, concluded on the evidence that the Aleut people had suffered losses that are compensable under American constitutional standards and the principles of equity that govern this land. For the Aleut people the Commission recommended five specific forms of restitution which we will discuss.

Mr. Chairman, before presenting our arguments for official recognition and compensation of the injustices suffered by the Aleut people, we wish to take this opportunity to thank Senators Matsunaga, Stevens, Inouye and Murkowski for their leadership on this legislation. We understand that 75 Senators have cosponsored this legislation.

The issues here are neither partisan nor parochial. The questions presented address the most fundamental choices of Government in dealing with the lives and the property of citizens who are defenseless and vulnerable to exploitation. In cosponsoring S. 1009 three-quarters of the United States Senate have made the statement that in the United States the victims of official wrongdoing may petition Congress for redress and receive a fair settlement of the matter.

Today's hearing, therefore, is more than presentation of testimony. Today's hearing is a celebration, really, of our constitutional process in this bicentennial year.

Mr. Chairman, thanks to the leadership of Senator Ted Stevens, who is with you today, the mandate of the Commission established by Congress in 1980 was expanded to include an investigation into the Aleuts' treatment in World War II. The Commission's report makes plain that the Aleuts experience was a tragic one. It is well documented and not in dispute. The record of the injustices suffered by the Aleuts is based almost entirely upon contemporary U.S. Government correspondence, memoranda and official documents.

Mr. Chairman, the Aleut villages of St. Paul and St. George in the Pribilofs, and the Aleut villages of the Aleutian Island Chain west of Unimak Island were evacuated within 60 days of the fall of Attu and Kiska. The Commission found that the evacuation of 881 Aleuts from these villages was in fact a rational wartime measure designed to protect civilians in an active theatre of war. And this finding of the Commission, that it was a rational wartime measure to evacuate, we are not challenging today.

The Aleuts' case for compensation derives not from the relocation orders in the first instance, but rather from the treatment the Aleuts suffered at the hands of their Government following the evacuation. The Aleuts were transported to temporary camps—as Senator Murkowski pointed out—abandoned fish canneries, abandoned gold mines, abandoned CCC camps near Senator Murkowski's boyhood home.

The conditions were deplorable. The people in these camps suffered from inadequate medical care, from inadequate shelter, from inadequate sanitation facilities and from other life threatening conditions. The camps were isolated, transportation in and out of them was at the discretion of the Government supervisors. The people were impoverished. The press and correspondence to and from the territory of Alaska during World War II to the lower 48 was subject to military censorship and the documents which were discovered and entered into evidence by the Commission demonstrate that the mail was censored out of these Aleut camps so that the lower 48 and the press could not find out about the terrible conditions that existed in them.

In fact, the then Attorney General of the Territory, a man named Henry Roden, went to investigate the Funter Bay camps on Admiralty Island and he was aghast. He found people dying. He found people suffering from the ravages of disease and epidemics. Mr. Roden said something must be done. Of course, something was done, but it was too little too late and many, many people died.

So the concern and the outrage felt by Attorney General Roden and by the officials of the Public Health Service were never communicated to the outside world because of censorship. There was enough food there, but the complete breakdown of other services resulted in these epidemics that ravaged the camps. The very old and the very young, in particular, could not survive. More than 10 percent of all the people who entered these camps died before the camps were disbanded.

While the Aleuts were in the camps, their homes back in the islands that Senator Stevens described, their homes in the six villages, their community buildings and their churches were occupied by U.S. military personnel in the Alaska Defense Command. In these remote outposts, I regret to say, the local commanders lost all control of the troops.

There were over 120,000 U.S. servicemen stationed in that part of Alaska during the war, actually during 1942. So every home available was used to quarter troops. But the U.S. military Boards of Inquiry after the war determined that the Aleuts' homes and personal property, left behind out of necessity, were ransacked and looted by these soldiers quartered there.

The churches were desecrated. Religious icons of immense cultural value were lost. In all of the villages, incredibly, it was the same—in all six villages. There was not a single village where the local commanders were able to protect the Aleuts' property as it was their duty to do.

Mr. Chairman, the Commission correctly concluded that no effective system of records exists by which to estimate exactly the Aleuts uncompensated losses. There is no value that can be placed upon the pain and suffering that these people suffered, and so therefore, the form and content of the legislation before you has been recommended by the Commission as an alternative to traditional claims procedures.

Under Senator Ted Stevens' leadership in the 98th Congress, as Chairman of this Subcommittee, the Subcommittee received testimony of many survivors of these camps in southeastern Alaska. In Anchorage field hearings on August 29, 1984, the Subcommittee took the testimony of the late Phil Tutiakoff, a venerated and respected Aleut leader from Unalaska, who survived the Burnett Inlet camp experience as a young and handicapped child.

The Subcommittee heard from Gregg Golodoff, removed from his home on Attu to prison camp on Hokkaido Island and then returned after the war, after VJ day. But when Mr. Golodoff and his friends from Attu returned to Alaska, they were administratively relocated to another island and the historic Aleut village of Attu was lost forever by executive fiat.

In the Anchorage hearings, Senator Stevens sought the personal experiences of Dan Prokopief, Leo Savaroff, Perfinia Pletnikoff, George Dirks, Michael Lekanof, Anna Philemonof, Anatoly Lekanof, Jr., the Reverend Michael Lestenkof, Francis Emanoff, Mike Zacharof, Boris Merculief, Lilian Pelky, Faye Schlais, Zenia Borenin and many, many others who were in the camps.

This published hearing from the 98th Congress contains not only the testimony on the Japanese American redress, which was taken on the west coast in field hearings, but also the testimony of these folks from Alaska. Of course, Mr. Chairman, your Subcommittee now has the benefit of this hearing record upon which to base its recommendations to the Senate, as well as the hearing record being made today.

Mr. Chairman, the Commission, as I said, recommended five forms of compensation. I will be brief, because I do want Agafon and Dimitri to have a chance to answer your questions. The five forms of compensation were, first of all, that there should be a trust established for the beneficial use of the Aleut people in the surviving villages.

Second, individual compensation, per capita compensation, should be provided to each surviving Aleut who was relocated during World War II and who is alive today.

Third, the Aleuts should be compensated for the church properties that were lost, damaged or destroyed by U.S. forces during the war and have heretofore not been compensated.

Fourth, the Aleut people should receive compensation for the elimination of Attu village by executive fiat after the war which, of course, resulted in the loss of traditional Aleut lands on Attu Island.

Fifth, the Commission recommended that wartime debris on the inhabited portions of the Aleutians and the Pribilofs should be cleaned up.

Well, thanks once again to Senator Stevens and his colleagues on the Defense Appropriations Subcommittee, the most hazardous wartime debris along the Aleutian chain has already been cleaned up. Using the Environmental Restoration Defense Account of the U.S. Department of Defense, through annual appropriations, great progress has been made in cleaning up this wartime debris, so all of the people in the region, of course, who live there are very greatful to the Congress for having provided this relief. We would recommend that that part of the bill relating to the cleanup of the debris should be deleted from this legislation.

Now, the four other Commission recommendations, of course, remain to be implemented. As Attachment A to my prepared statement, which is just stapled to the prepared statement, I have respectfully submitted draft legislative language to implement these four remaining measures of restitution. This language is in the form of a draft bill, and it would be substitute language for Title III of S. 1009 relating to the Aleuts.

Now, we submit this substitute language because it has been prepared in consultation with the House Judiciary Committee staff for full Committee markup in the House of Representatives and it is consistent with all of the principles of S. 1009, but at substantially reduced cost to the United States. It achieves the objectives of the Aleut people for redress of the grievances they suffered.

Now, Mr. Chairman, it is important to note that the Assistant Attorney General of the United States, Mr. Willard, testified on companion legislation to S. 1009 in the House of Representatives. He addressed the Aleut portion of the bill in the House and said that there were some constitutional infirmities. There were Establishment Clause problems, he felt, in respect to the compensation for the loss of church properties, and he felt that there was an Appointments Clause problem because of the Congressional designation of the administrator of the restitution rather than a Presidential appointment.

The draft language which we have submitted to you today corrects those two deficiencies which were addressed by the Justice Department, and so we feel that there will be no Establishment Clause problems and no Appointments Clause problems with the revised language as submitted.

Mr. Chairman, finally I request that this legal Memorandum entitled "The Relocation and Internment of the Aleut People in World War II: A Case in Law and Equity for Compensation," be included in the hearing record.[20]

This document, which was prepared by my office, establishes the precedents throughout American history for compensation comparable to that suggested for the Japanese Americans and for the Aleut people who were relocated during World War II. We would commend this legal research to the Committee staff as they review the bases and purposes for this legislation

Senator **Pryor**. Without objection.

Mr. **Kirtland**. Finally, Mr. Chairman, I want to introduce now, of course, our two colleagues who have traveled from Alaska to be with the Committee today. Mr. Agafon Krukoff, Jr., who is the President of the Aleut Corporation, and Dimitri Philemonof, the Executive Director of the Aleutian/ Pribilof Islands Association.

Now, Mr. Chairman, if it meets with the Chair's approval, I would like to suggest that Mr. Krukoff make his presentation, and then Mr. Philemonof can make his, and then we would be pleased to respond to any questions you might have.

Senator **Pryor**. Mr. Kirtland, thank you.

Mr. Krukoff and Mr. Philemonof, did not I meet with you two gentlemen possibly in the summer of 1985? I was in Alaska with several of our colleagues. Did we meet at the airport and have a visit about some of these matters? I do not know if you were in that delegation or not.

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[20] See p. 437.

Mr. KRUKOFF. I think I have met you before, but I am not sure.

Senator PRYOR. Well, if not, we will someday in the future. I love Alaska. That was my first trip to Alaska, and I want to go back.

We deeply appreciate your being here. I am going to have to leave the hearing, and I am going to ask Senator Stevens, who is certainly more than qualified to run this hearing, to do so, and be joined with Senator Matsunaga. I do apologize to our witnesses.

Mr. KRUKOFF. Thank you, Mr. Chairman. I just wanted to say thanks for becoming the 75th member supporting S. 1009, before you leave. Thank you very much.

Senator PRYOR. You are most welcome.

Senator STEVENS. We thank you very much, Mr. Chairman, for scheduling this hearing.

Senator PRYOR. Thank you, Senator Stevens.

Senator STEVENS [presiding]. Please proceed, Mr. Krukoff.

Mr. KRUKOFF. Mr. Chairman, I do not need to introduce myself to you, but for the record and for Senator Matsunaga, my name is Agafon Krukoff. I am President of the Aleut Corporation based in Anchorage, Alaska, one of the 13 regional corporations established by the Native Claims Settlement Act of 1971.

One of my responsibilities as President of our region is the management of those lands that we received and that our village corporations received in the 1970's as well as trying to make a go of being a part of the business world to make the future better for Aleut people.

As you may have heard, some of those regional and native corporations are having a tough time making a go of it. We happen to be one of the smaller regional corporations. We happen to be one of those that in our inner circles in Alaska are considered a have-not corporation. We do not have any direct relationship with, for example, those corporations involved with the oil companies or those corporations involved with timber assets.

Hopefully, we will find some gold and silver in our region. There is a lot of potential for that, but in a short description of our corporation, we are just one of those that are smaller and trying to make a go of it.

I am here to discuss specifically one part of the bill as it relates to Attu Island. That recommendation made by the Commission to declare Attu Island to be Native land and to direct that the island be conveyed to the Aleut people through the Aleut Corporation was a very good recommendation on the part of the Commission.

The basis of this recommendation may be stated in simple terms. Traditionally Attu had been Aleut land and were it not for the war, we would have been finding ourselves making the selection for those lands under the Claims Act. In fact, out of the five subtribes in our region, the war basically, because our people were not allowed to return back to Attu, we have lost an entire sub-tribe with our region, the Attu people. There is only a handful of them scattered between Atka Island and other areas in the Aleutian chain.

Let me, for the record, give you an idea of what happened on June 8, 1942. That day units of the Imperial Japanese Army made an unopposed landing at Holtz Bay on Attu Island. The main force attacked the undefended Aleut village at 7:30 a.m. Forty-two Aleut citizens of the United States and 2 Alaska Indian Service Employees were taken prisoner. One of the Aleut elders died in July and was buried on Attu. The remaining Aleuts were taken from Attu in September and transported to Hokkaido Island in Japan, there to remain prisoners of war until they were discovered by American occupation forces in 1945.

When the Attuan people were repatriated from detention in Japan, they were not rehabilitated to their homeland. Instead, for the convenience of the Interior Department, they were involuntarily merged into the village of Atka. You know the Hatfield-McCoy situation. Traditionally the Attuans and the Atka people throughout history within our region, for whatever reasons, were almost like enemies, you know, the Hatfields and McCoys. Unfortunately, they had to be forced into the situation to be living with traditional enemies. Of course, that is not the situation today, but for whatever reason, for what it is worth, that is what happened.

This failure resulted in their loss of right when land selections were made following enactment of the Native Claims Settlement Act. The Regional Corporation could have selected 69,120 acres of land under the Claims Settlement Act. So we were not made whole because of the war under the Claims Settlement Act.

The Interior Department's post-war administrative convenience, in other words, was accomplished at a cost of losing 69,120 acres, as I mentioned, of land and a traditional village that had existed on Attu for thousands of years. In recognizing that the Interior Department's conduct deprived the Aleut people of valuable landholdings, the Commission properly recommended that compensation.

Mr. Chairman, the events of recent years have made the return of Attu Island impractical, if not impossible, from a legislative perspective. This is because now Attu Island after all these years becomes public lands within the National Wildlife Refuge System. It has been designated as wilderness to become part of the National Wilderness Preservation System. This designation was made by section 702 of the Alaska National Interest Lands Conservation Act in accordance with section 3[c] of the Wilderness Act.

Mr. Chairman, when testimony was taken in the 98th Congress on the Commission's implementing legislation, it became apparent that major environmental organizations would strongly oppose even one acre of land coming to the Aleut people. So as an alternative, the Alaska Congressional delegation, with the support of environmental groups and others, has recommended that the Aleut Corporation be extended compensation of the Attu conveyance as proposed by the Commission.

One such form is contained in a current S. 1009 as introduced and referred to your Subcommittee. That compensation would establish a property account which would be available to the Aleut Corporation for the purpose of bidding on surplus Federal property made available through the GSA procedure. Under the terms of S. 1009, the Aleut Corporation's account would consist of $500 in bidding rights for each of the 35,737 acres determined to have been traditionally used by the Aleut people on Attu Island.

The initial balance of the property account, in other words, would be $17.8 million in bidding rights for surplus Federal properties. Now, another approach is reflected in Attachment A to our counsel's statement, the legislative language prepared for consideration by the House Committee on the Judiciary.

That draft provides for a process of identification by the Secretary of the Interior of those lands traditionally used by the Aleut people on Attu, followed by a valuation process using the Department's current procedures for the valuation of comparable wilderness lands in Alaska. Once the valuation process is complete, the Secretary of the Interior would certify the amount to be paid to the Aleut people for the loss of traditional Aleut lands on Attu Island.

Under the terms of this approach, the compensation for the loss of Attu Island would be not less than $12.25 million and not more than $15 million. There would be an authorization for appropriations to make this payment, in lieu of the acquisition of Attu Island by the Aleut interests.

You know, if you look at the Claims Settlement Act, and were it not for the war, 69,120 acres under ANCSA would be qualified for the Attu villagers as well as for the Aleut Corporation. If we used a valuation of $500 per acre, which we think we can prove is a comparable figure for lands in that area, that type of lands, $500 times 69,000 acres is twice the amount of money that this bill speaks of.

On a personal note, I am from St. Paul Island. I was pleased that Senator Murkowski this morning mentioned his personal discussions with Mary Bourdukofski from St. Paul Island, also a very dear friend of mine. My parents, like Mary Bourdukofski, were taken to a fish cannery in Funter Bay during World War II. I was born shortly after their return to St. Paul.

I urge that the full measure of relief recommended by the Commission be granted, principally for the benefit of the villages themselves, and for the benefit of those few survivors, and I think we are talking about only 400 actual survivors living today.

I was moved by testimony on behalf of the Japanese American portion of the bill, and I was very encouraged this morning to see action at the full Committee level in the House of Representatives in favor of the Japanese Americans. Congressman Frank has assured me personally that we are following close behind, that he expects to report both bills and act on both bills sometime in the very near future, together. So, seeing what happened to the Japanese American portion in the House just excited me and I will be excited to see this whole thing move in the celebration of a bicentennial year of the Constitution. I am just so pleased.

I would like to introduce Mr. Dimitri Philemonof, and if it is okay with you, Mr. Chairman, I would be pleased to answer any questions after he has completed his testimony.

Senator **Stevens**. Please go ahead, Mr. Philemonof.

Mr. **Philemonof**. Thank you, Mr. Chairman, and Senator Matsunaga.

My name is Dimitri Philemonof and I am the Executive Director of the Aleutian/Pribilof Islands Association, which is the non-profit corporation established to promote the welfare of the Aleut region's Native peoples. Our Association administers a number of programs under contract with the State of Alaska and the Federal Government.

The draft legislative language submitted by our counsel, John Kirtland, would eliminate the constitutional concerns raised by the Assistant Attorney General of the United States in hearings before the House Judiciary Committee. Those concerns were, as stated earlier, that the Government, under the terms of S. 1009, had too great a role in the reconstruction of church properties lost, damaged or destroyed by American servicemen in World War II. Also, under the terms of S. 1009 the process of Congressional designation of the administrator for Aleut reparations violates the constitutional requirement that such officers be appointed by the President or heads of departments.

Mr. Chairman, the language we are forwarding eliminates the concerns by providing direct monetary compensation for church property losses caused by the American servicemen in the Aleutian region in World War II. The language also provides for the appointment of the administrator of Aleut restitution by the Secretary of the Interior, after consultation with appropriate regional entities. These modifications of the bill can be accomplished without damaging the basic scheme for reparations outlined in S. 1009.

The six Aleut villages and the 881 village residents affected by the relocation during World War II suffered severely and have never fully recovered from the experience. The Commission's recommended compensation will assist in the rebuilding process. I will address three of the five remedies provided by the Commission.

Number 1, the trust for affected Aleut communities. Mr. Chairman, the Commission recommended establishment of a trust for the benefit of the affected Aleut communities and for the survivors of the relocation remaining in their home villages. The principal and earnings of the $5 million trust account would be administered by trustees for the benefit of the elderly, disabled or seriously ill persons on the basis of special need, the benefit of students in need of scholarships, the preservation of the Aleut cultural heritage and historical records, the improvement of community centers, and for other purposes.

These villages were deprived of their elders in many cases through death and through ravages of disease in the camps. The people returned after the war to find their village centers looted and destroyed, their property taken and vandalized. This trust would help restore some of the lost property and remind all Aleuts, young and old, of the suffering of the generations that found themselves caught up in the severe dislocation of the war years. Its earnings could be used to train new leaders, to carry out the traditions of the Aleut culture that were tested so severely by the relocation experience.

Number 2, compensation for the church properties. Mr. Chairman, today it seems hard to believe that the churches of the Aleut region were looted by the American servicemen within the Aleutian theatre during World War II. The losses of the icons and church items were very extensive and reasonably well documented at that time. In many cases the elders can specify properties that were lost, damaged or destroyed in the sacred houses of worship.

The Commission has properly recommended that the Aleut congregation be compensated for the losses that they sustained to the extent possible at this late date. Under the revised legislative language we have submitted today, the trustees appointed by the Secretary of the Interior would receive the compensation paid for lost, damaged or destroyed church properties.

They, in turn, would work for the affected churches to ensure that the restitution is made consistent with the intent of the Commission and Congress. The identification of such lost, damaged, or destroyed church properties, and its valuation, would be the job of the administrator. We trust that the Secretary of the Interior would appoint the Association as the Administrator, as the terms of S. 1009 make clear should be done.

Number 3, individual compensation for the Aleuts. Mr. Chairman, the Commission recommended that $5,000 per capita should be paid to each surviving Aleut who was relocated to the camps during the war. All of the Congressional bills introduced since the Commission made its report have recommended a per capita payment of $12,000 for each eligible Aleut.

There are several reasons for seeking additional funding. First, the sponsors of the bill have recognized the hardships suffered by the Aleuts in the camps during their relocation process. Conditions were so harsh that more than 10 percent of all Aleuts died while they were there. There was no medical care in most camps and virtually all Aleuts suffered from disease.

There is probably no survivor who did not lose a family member in the World War II camps; even further yet, there is probably no survivor who did not suffer from serious disease caused by inadequate sanitation facilities, inadequate clean water, inadequate shelter, and other failures of administration.

Moreover, there is virtually no Aleut survivor today who did not lose most of his personal property while away in camps in southeastern Alaska. This property, as the Commission has documented in its final report, was never paid for.

For all of these reasons, the sponsors of S. 1009 have recommended $12,000 as a payment to each surviving Aleut, and we support the bill in this regard.

In conclusion, Mr. Chairman, I am here today to represent the people of the Aleutian and Pribilof region who suffered the relocation process during World War II. These people at the time did not question the military decision to relocate them. It was a rational war measure and our people were fully cooperative with the military authorities who came on less than 48 hours notice and asked them to be moved with no more than one suitcase of personal belongings.

The tragedy, of course, was that the Government failed in its duty to care for those Aleuts in its charge. They were neglected, they became ill, and many of them died. The people returned to find their property and their churches ransacked, looted and burned. There was no military necessity for this.

As a matter of equity and fair treatment, we ask that Congress promptly enact the remedies recommended by the Commission on Wartime Relocation and Internment of Civilians.

In closing, one more time, I would just like to say this is very close to my heart. I was born and raised on the Pribilof Islands and I was born 6 months after we were brought back from Funter Bay.

I thank you, Mr. Chairman, and Senator Matsunaga, and our panel will be pleased to answer any questions if you have any further.

Senator STEVENS. Senator Matsunaga, do you have any questions?

Senator MATSUNAGA. No questions. I just wish to thank all three of you, especially you two who came all the way from Alaska to testify before this Committee in support of the measure. I am certain that your testimony, after being read by other members of the Subcommittee, will result in the favorable reporting of this bill to the full Committee for markup and then from there on to the Floor.

I thank all three of you, very much.

Senator STEVENS. I thank you, too.

I do have one request. The President of the Cook Inlet Regional Corporation, Roy Hundorf, could not be here, and I ask that his statement be printed in the record.[21]

Senator STEVENS. I have listened to these hearings before and, as you know, I have talked to those who survive in the villages as I travel through Alaska. I remember the one who told me that they were put off in one place and the only thing that was given to them was Spam. That was the only food that they had for about 3 months. I forget which one that was, but I have had some very moving conversations with some of those elders and many of them are gone now.

We are talking about something that happened 45 years ago. So it is timely, I think, and I am grateful to my friends, and our friends from Hawaii, for helping us as they move forward with their bill, which is equally important and it represents a step that we must take. I think the most important thing of their bill is the apology.

The most important thing of ours is some way to compensate people for lands that they lost that they can never get back now. Some of them have never even seen them since they were taken from their villages. So it is a sad thing. It brings back too many memories for me.

I thank all three of you for coming. John, we will work with you on that draft of yours and see what the Department of Justice thinks about it.

Mr. KIRTLAND. Yes, sir. The present status, of course, is that it is being reviewed by the House Office of the Legislative Counsel at the moment. It was something that we felt so important that we did not want the process for providing compensation to raise any constitutional infirmity issues when what we are really trying to do is provide restitution to these people that the Constitution mandates.

We are very grateful to you, Senator Stevens, for all that you have done. And Senator Matsunaga, everyone is deeply grateful to you for the major efforts that you have made in terms of the co-sponsorship, and thank you, sir.

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[21] See p. 367.

Senator **Stevens**. This hearing is adjourned. We thank you all for appearing.

Mr. **Kirtland**. Thank you, Senator.

[Whereupon the Subcommittee adjourned subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

100th CONGRESS
1st Session

S. 1009

To accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

IN THE SENATE OF THE UNITED STATES

April 10 (legislative day, March 30), 1987

Mr. Matsunaga (for himself, Mr. Inouye, Mr. Stevens, Mr. Murkowski, Mr. Byrd, Mr. Dole, Mr. Cranston, Mr. Simpson, Mr. Adams, Mr. Armstrong, Mr. Baucus, Mr. Bentsen, Mr. Biden, Mr. Bond, Mr. Boren, Mr. Boschwitz, Mr. Bradley, Mr. Breaux, Mr. Burdick, Mr. Chiles, Mr. Cochran, Mr. Cohen, Mr. Conrad, Mr. D'Amato, Mr. Daschle, Mr. DeConcini, Mr. Dixon, Mr. Dodd, Mr. Durenberger, Mr. Evans, Mr. Fowler, Mr. Garn, Mr. Glenn, Mr. Gore, Mr. Graham, Mr. Harkin, Mr. Hatch, Mr. Hatfield, Mr. Johnston, Mr. Karnes, Mr. Kasten, Mr. Kennedy, Mr. Kerry, Mr. Lautenberg, Mr. Leahy, Mr. Levin, Mr. Lugar, Mr. McConnell, Mr. Melcher, Mr. Metzenbaum, Ms. Mikulski, Mr. Mitchell, Mr. Moynihan, Mr. Packwood, Mr. Pell, Mr. Proxmire, Mr. Reid, Mr. Riegle, Mr. Rockefeller, Mr. Rudman, Mr. Sanford, Mr. Sarbanes, Mr. Sasser, Mr. Simon, Mr. Specter, Mr. Stafford, Mr. Symms, Mr. Warner, Mr. Weicker, Mr. Wilson, and Mr. Wirth) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND PURPOSE

SECTION 1. (a) FINDINGS.—The Congress finds that—

(1) the findings of the Commission on Wartime Relocation and Internment of Civilians, established by the Commission on Wartime Relocation and Internment of Civilians Act, accurately and completely describe the circumstances of the exclusion, relocation, and internment of in excess of one hundred and ten thousand United States citizens and permanent resident aliens of Japanese ancestry and the treatment of the individuals of Aleut ancestry who were removed from the Aleutian and the Pribilof Islands;

(2) the internment of individuals of Japanese ancestry was carried out without any documented acts of espionage or sabotage, or other acts of disloyalty by any citizens or permanent resident aliens of Japanese ancestry on the west coast;

(3) there was no military or security reason for the internment;

(4) the internment of the individuals of Japanese ancestry was caused by racial prejudice, war hysteria, and a failure of political leadership;

(5) the excluded individuals of Japanese ancestry suffered enormous damages and losses, both material and intangible, and there were incalculable losses in

education and job training, all of which resulted in significant human suffering;

(6) the basic civil liberties and constitutional rights of those individuals of Japanese ancestry interned were fundamentally violated by that evacuation and internment;

(7) as documented in the Commission's reports, the Aleut civilian residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island were relocated during World War II to temporary camps in isolated regions of southeast Alaska where they remained, under United States control and in the care of the United States, until long after any potential danger to their home villages had passed;

(8) the United States failed to provide reasonable care for the Aleuts, and this resulted in widespread illness, disease, and death among the residents of the camps; and the United States further failed to protect Aleut personal and community property while such property was in its possession or under its control;

(9) the United States has not compensated the Aleuts adequately for the conversion or destruction of personal property caused by the United States military occupation of Aleut villages during World War II;

(10) the United States has not removed certain abandoned military equipment and structures from inhabited Aleutian Islands following World War II, thus creating conditions which constitute potential hazards to the health and welfare of the residents of the islands;

(11) the United States has not rehabilitated Attu village, thus precluding the development of Attu Island for the benefit of the Aleut people and impairing the preservation of traditional Aleut property on the island; and

(12) there is no remedy for injustices suffered by the Aleuts during World War II except an Act of Congress providing appropriate compensation for those losses which are attributable to the conduct of United States forces and other officials and employees of the United States.

(b) PURPOSES.—The purposes of this Act are to—

(1) acknowledge the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry;

(2) apologize on behalf of the people of the United States for the evacuation, relocation, and internment of

the citizens and permanent resident aliens of Japanese ancestry;

(3) provide for a public education fund to finance efforts to inform the public about the internment of such individuals so as to prevent the reoccurrence of any similar event;

(4) make restitution to those individuals of Japanese ancestry who were interned;

(5) make restitution to Aleut residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island, in settlement of United States obligations in equity and at law, for—

(A) injustices suffered and unreasonable hardships endured while under United States control during World War II;

(B) personal property taken or destroyed by United States forces during World War II;

(C) community property, including community church property, taken or destroyed by United States forces during World War II; and

(D) traditional village lands on Attu Island not rehabilitated after World War II for Aleut occupation or other productive use.

TITLE I—RECOGNITION OF INJUSTICE AND APOLOGY ON BEHALF OF THE NATION

SEC. 101. The Congress accepts the findings of the Commission on Wartime Relocation and Internment of Civilians and recognizes that a grave injustice was done to both citizens and resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. On behalf of the Nation, the Congress apologizes.

TITLE II—UNITED STATES CITIZENS OF JAPANESE ANCESTRY AND RESIDENT JAPANESE ALIENS

DEFINITIONS

SEC. 201. For the purposes of this title—

(1) the term "eligible individual" means any living individual of Japanese ancestry who—

(A) was enrolled on the records of the United States Government during the period beginning on December 7, 1941, and ending on June 30, 1946, as being in a prohibited military zone; or

(B) was confined, held in custody, or otherwise deprived of liberty or property during the period as a result of—

(i) Executive Order Numbered 9066 (February 19, 1942; 7 Fed. Reg. 1407);

(ii) the Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones" and approved March 21, 1942 (56 Stat. 173); or

(iii) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action made by or on behalf of the United States or its agents, representatives, officers, or employees respecting the exclusion, relocation, or detention of individuals on the basis of race;

(2) the term "Fund" means the Civil Liberties Public Education Fund established in section 204;

(3) the term "Board" means the Civil Liberties Public Education Fund Board of Directors established in section 206;

(4) the term "evacuation, relocation, and internment period" means that period beginning on December 7, 1941, and ending on June 30, 1946; and

(5) the term "Commission" means the Commission on Wartime Relocation and Internment of Civil-

ians, established by the Commission on Wartime Relocation and Internment of Civilians Act.

CRIMINAL CONVICTIONS

SEC. 202. (a) REVIEW.—The Attorney General is requested to review all cases in which United States citizens and permanent resident aliens of Japanese ancestry were convicted of violations of laws of the United States, including convictions for violations of military orders, where such convictions resulted from charges filed against such individuals during the evacuation, relocation, and internment period.

(b) RECOMMENDATIONS.—Based upon the review required by subsection (a), the Attorney General is requested to recommend to the President for pardon consideration those convictions which the Attorney General finds were based on a refusal by such individuals to accept treatment that discriminated against them on the basis of race or ethnicity.

(c) PARDONS.—In consideration of the findings contained in this Act, the President is requested to offer pardons to those individuals recommended by the Attorney General pursuant to subsection (b).

CONSIDERATION OF COMMISSION FINDINGS

SEC. 203. Departments and agencies of the United States Government to which eligible individuals may apply for the restitution of positions, status, or entitlements lost in whole or in part because of discriminatory acts of the United States Government against such individuals based upon their race or ethnicity and which occurred during the evacuation, relocation, and internment period shall review such applications for restitution of positions, status, or entitlements with liberality, giving full consideration to the historical findings of the Commission and the findings contained in this Act.

TRUST FUND

SEC. 204. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States the Civil Liberties Public Education Fund, to be administered by the Secretary of the Treasury. Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code, and shall only be available for disbursement by the Attorney General under section 205, and by the Board of Directors of the Fund under section 206.

(b) AUTHORIZATION.—There are authorized to be appropriated to the Fund $1,300,000,000.

RESTITUTION

SEC. 205. (a) LOCATION OF ELIGIBLE INDIVIDUALS.—(1) The Attorney General, with the assistance of the Board, shall locate, using records already in the possession of the United States Government, each eligible individual and shall pay out of the Fund to each such individual the sum of $20,000. The Attorney General shall encourage each eligible individual to submit his or her current address to the Department of Justice through a public awareness campaign.

(2) If an eligible individual refuses to accept any payment under this section, such amount shall remain in the Fund and no payment shall be made under this section to such individual at any future date.

(b) PREFERENCE TO OLDEST.—The Attorney General shall endeavor to make payment to eligible individuals who are living in the order of date of birth (with the oldest receiving full payment first), until all eligible individuals who are living have received payment in full.

(c) NONRESIDENTS.—In attempting to locate any eligible individual who resides outside the United States, the Attorney General may use any available facility or resources of any public or nonprofit organization.

(d) NO SET OFF FOR ADMINISTRATIVE COSTS.—No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any eligible individual.

(e) EXTINGUISHMENT OF CLAIMS.—The claims of an eligible individual against the United States shall be extinguished—

(A) on a date which is ten years after the date of enactment of this Act, or

(B) on the date by which the individual has received the total amount of payments under this Act, whichever first occurs.

BOARD OF DIRECTORS

SEC. 206. (a) ESTABLISHMENT.—There is hereby established the Civil Liberties Public Education Fund Board of Directors which shall be responsible for making disbursements from the Fund in the manner provided in this section.

(b) DISBURSEMENTS FROM FUND.—The Board of Directors may make disbursements from the Fund only—

(1) to sponsor research and public educational activities so that the events surrounding the relocation and internment of United States citizens and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood;

(2) to fund comparative studies of similar civil liberties abuses, or to fund comparative studies of the effect upon particular groups of racial prejudice embodied by Government action in times of national stress;

(3) to prepare and distribute the hearings and findings of the Commission to textbook publishers, educators, and libraries;

(4) for the general welfare of the ethnic Japanese community in the United States, taking into consideration the effect of the exclusion and detention on the descendants of those individuals who were detained during the evacuation, relocation, and internment period (individual payments in compensation for loss or damages shall not be made under this paragraph); and

(5) for reasonable administrative expenses, including expenses incurred under subsections (c)(3), (d), and (e).

(c) MEMBERSHIP AND TERMS OF OFFICE.—(1) The Board shall be composed of nine members appointed by the President, by and with the advice and consent of the Senate, from persons who are not officers or employees of the United States Government. At least five of the individuals appointed shall be individuals who are of Japanese ancestry.

(2)(A) Except as provided in subparagraphs (B) and (C), members shall be appointed for terms of three years.

(B) Of the members first appointed—

(i) five shall be appointed for terms of three years; and

(ii) four shall be appointed for terms of two years;

as designated by the President at the time of appointment.

(C) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office. No individual may be appointed to more than two consecutive terms.

(3) Members of the Board shall serve without pay, except members of the Board shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Board, in the same manner as persons employed intermittently in the United States Government are allowed expenses under section 5703 of title 5, United States Code.

(4) Five members of the Board shall constitute a quorum but a lesser number may hold hearings.

(5) The Chair of the Board shall be elected by the members of the Board.

(d)(1) The Board shall have a Director who shall be appointed by the Board and who shall be paid at a rate not to exceed the minimum rate of basic pay payable for GS–18 of the General Schedule under section 5332(a) of title 5, United States Code.

(2) The Board may appoint and fix the pay of such additional staff personnel as it may require.

(3) The Director and the additional staff personnel of the Board may be appointed without regard to section 5311(B) of title 5, United States Code, and may be appointed without regard to the provisions of such title governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Board may not exceed a rate equivalent to the rate payable under GS-18 of the General Schedule under section 5332(a) of such title.

(e) SUPPORT SERVICES.—The Administrator of General Services shall provide to the Board of Directors on a reimbursable basis such administrative support services as the Board may request.

(f) DONATIONS.—The Board may accept, use, and dispose of gifts or donations or services or property for purposes authorized under subsection (b).

(g) ANNUAL REPORT.—Not later than twelve months after the first meeting of the Board and every twelve months thereafter, the Board shall transmit a report describing the activities of the Board to the President and to each House of the Congress.

(h) SUNSET FOR BOARD.—The Board shall terminate not later than the earlier of ninety days after the date on which an amount has been obligated to be expended from the Fund which is equal to the amount authorized to be appropriated to the Fund or ten years after the date of enactment of this Act. Investments shall be liquidated and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury of the United States.

TITLE III—ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION

SHORT TITLE

SEC. 301. This title may be cited as the "Aleutian and Pribilof Islands Restitution Act".

DEFINITIONS

SEC. 302. As used in this title, the term—

(1) "Administrator" means the person designated under the terms of this title to administer certain expenditures made by the Secretary from the Aleutian and Pribilof Islands Restitution Fund;

(2) "affected Aleut villages" means those Aleut villages in Alaska whose residents were evacuated by United States forces during World War II, including Akutan, Atka, Nikolski, Saint George, Saint Paul, and Unalaska; and the Aleut village of Attu, Alaska, which was not rehabilitated by the United States for Aleut residence or other use after World War II;

(3) "Aleutian Housing Authority" means the nonprofit regional native housing authority established for the Aleut region pursuant to AS 18.55.995 of the laws of the State of Alaska or any successor law of the State of Alaska;

(4) "Association" means the Aleutian/Pribilof Islands Association, a nonprofit regional corporation established for the benefit of the Aleut people and organized under the laws of the State of Alaska;

(5) "Corporation" means the Aleut Corporation, a for-profit regional corporation for the Aleut region organized under the laws of the State of Alaska and established pursuant to section 7 of the Alaska Native Claims Settlement Act (Public Law 92–203);

(6) "eligible Aleut" means any Aleut living on the date of enactment of this Act who was a resident of Attu Island on June 7, 1942, or any Aleut living on the date of enactment of this Act who, as a civilian, was relocated by authority of the United States from his home village on the Pribilof Islands or the Aleutian Islands west of Unimak Island to an internment camp, or other temporary facility or location, during World War II; and

(7) "Secretary" means the Secretary of the Treasury.

ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION FUND

SEC. 303. (a) ESTABLISHMENT.—There is established in the Treasury of the United States a Fund to be known as the Aleutian and Pribilof Islands Restitution Fund (hereinafter referred to as the "Fund"). The Fund shall consist of amounts appropriated to it, as authorized by sections 306 and 307 of this title.

(b) REPORT.—It shall be the duty of the Secretary to hold the Fund, and to report to the Congress each year on the financial condition and the results of operations of such Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as a House document of the session of Congress to which the report is made.

(c) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(1) on original issue at the issue price, or

(2) by purchase of outstanding obligations at the market price.

(d) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary at the market price.

(e) INTEREST ON CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(f) TERMINATION.—The Secretary shall terminate the Fund six years after the date of enactment of this Act, or one year after the completion of all restoration work pursuant to section 306(c) of this title, whichever occurs later. On the date the Fund is terminated, all investments shall be liquidated by the Secretary and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury of the United States.

EXPENDITURES AND AUDIT

SEC. 304. (a) EXPENDITURES.—The Secretary is authorized and directed to pay, to the extent provided by appropriation Acts, to the Administrator from the principal, interest, and earnings of the Fund, such sums as are necessary to carry out the duties of the Administrator under this title.

(b) AUDIT.—The activities of the Administrator under this title may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, and files and all other papers, things, or property belonging to or in use by the Administrator, pertaining to such activities and necessary to facilitate the audit.

ADMINISTRATION OF CERTAIN FUND EXPENDITURES

SEC. 305. (a) DESIGNATION OF ADMINISTRATOR.—The Association is hereby designated as Administrator, subject to the terms and conditions of this title, of certain specified expenditures made by the Secretary from the Fund. As soon as practicable after the date of enactment of this Act the Secretary shall offer to undertake negotiations with the Association, leading to the execution of a binding agreement with the Association setting forth its duties as Administrator under the terms of this title. The Secretary shall make a good-faith effort to conclude such negotiations and execute such agreement within sixty days after the date of enactment of this Act. Such agreement shall be approved by a majority of the Board of Directors of the Association, and shall include, but need not be limited to—

(1) a detailed statement of the procedures to be employed by the Association in discharging each of its responsibilities as Administrator under this title;

(2) a requirement that the accounts of the Association, as they relate to its capacity as Administrator, shall be audited annually in accordance with generally

accepted auditing standards by independent certified public accountants or independent licensed public accountants; and a further requirement that each such audit report shall be transmitted to the Secretary and to the Committees on the Judiciary of the Senate and House of Representatives; and

(3) a provision establishing the conditions under which the Secretary, upon thirty days notice, may terminate the Association's designation as Administrator for breach of fiduciary duty, failure to comply with the provisions of this Act as they relate to the duties of the Administrator, or any other significant failure to meet its responsibilities as Administrator under this title.

(b) SUBMISSION TO CONGRESS.—The Secretary shall submit the agreement described in subsection (a) to Congress within fifteen days after approval by the parties thereto. If the Secretary and the Association fail to reach agreement within the period provided in subsection (a), the Secretary shall report such failure to Congress within seventy-five days after the date of enactment of this Act, together with the reasons therefor.

(c) LIMITATION ON EXPENDITURES.—No expenditure may be made by the Secretary to the Administrator from the Fund until sixty days after submission to Congress of the agreement described in subsection (a).

DUTIES OF THE ADMINISTRATOR

SEC. 306. (a) IN GENERAL.—Out of payments from the Fund made to the Administrator by the Secretary, the Administrator shall make restitution, as provided by this section, for certain Aleut losses sustained in World War II, and shall take such other action as may be required by this title.

(b) TRUST ESTABLISHED.—(1) The Administrator shall establish a trust of $5,000,000 for the benefit of affected Aleut communities, and for other purposes. Such trust shall be established pursuant to the laws of the State of Alaska, and shall be maintained and operated by not more than seven trustees, as designated by the Administrator. Each affected Aleut village, including the survivors of the Aleut village of Attu, may submit to the Administrator a list of three prospective trustees. In designating trustees pursuant to this subsection, the Administrator shall designate one trustee from each such list submitted.

(2) The trustees shall maintain and operate the trust as eight independent and separate accounts, including—

(A) one account for the independent benefit of the wartime Aleut residents of Attu and their descendants;

(B) six accounts, each one of which shall be for the independent benefit of one of the six surviving affected Aleut villages of Atka, Akutan, Nikolski, Saint George, Saint Paul, and Unalaska; and

(C) one account for the independent benefit of those Aleuts who, as determined by the trustees, are deserving but will not benefit directly from the accounts established pursuant to subparagraphs (A) and (B).

The trustees shall credit to the account described in subparagraph (C), an amount equal to five per centum of the principal amount credited by the Administrator to the trust. The remaining principal amount shall be divided among the accounts described in subparagraphs (A) and (B), in proportion to the June 1, 1942, Aleut civilian population of the village for which each such account is established, as compared to the total civilian Aleut population on such date of all affected Aleut villages.

(3) The trust established by this subsection shall be administered in a manner that is consistent with the laws of the State of Alaska, and as prescribed by the Administrator, after consultation with representative eligible Aleuts, the residents of affected Aleut villages, and the Secretary. The trustees may use the accrued interest, and other earnings of the trust for—

(A) the benefit of elderly, disabled, or seriously ill persons on the basis of special need;

(B) the benefit of students in need of scholarship assistance;

(C) the preservation of Aleut cultural heritage and historical records;

(D) the improvement of community centers in affected Aleut villages; and

(E) other purposes to improve the condition of Aleut life, as determined by the trustees.

(4) There are authorized to be appropriated $5,000,000 to the Fund to carry out the purposes of this subsection.

(c) RESTORATION OF CHURCH PROPERTY.—(1) The Administrator is authorized to rebuild, restore, or replace churches and church property damaged or destroyed in affected Aleut villages during World War II. Within fifteen days after the date that expenditures from the Fund are authorized by this title, the Secretary shall pay $100,000 to the Administrator for the purpose of making an inventory and assessment, as complete as may be possible under the circumstances, of all churches and church property damaged or destroyed in affected Aleut villages during World War II. In making such inventory and assessment, the Administrator shall consult with the trustees of the trust established by section 306(b) of this title and shall take into consideration, among other things, the present replacement value of such damaged or destroyed structures, furnishings, and artifacts. Within one year after the date of enactment of this Act, the Administrator shall submit such inventory and assessment, together with specific recommendations and detailed plans for reconstruction, restoration, and replacement work to be performed, to a review panel composed of—

(A) the Secretary of Housing and Urban Development;

(B) the Chairman of the National Endowment for the Arts; and

(C) the Administrator of the General Services Administration.

(2) If the Administrator's plans and recommendations or any portion of them are not disapproved by the review panel within sixty days, such plans and recommendations as are not disapproved shall be implemented as soon as practicable by the Administrator. If any portion of the Administrator's plans and recommendations is disapproved, such portion shall be revised and resubmitted to the review panel as soon as practicable after notice of disapproval, and the reasons therefor, have been received by the Administrator. In any case of irreconcilable differences between the Administrator and the review panel with respect to any specific portion of the plans and recommendations for work to be performed under this subsection, the Secretary shall submit such specific portion of such plans and recommendations to the Congress for approval or disapproval by joint resolution.

(3) In contracting for any necessary construction work to be performed on churches or church property under this subsection, the Administrator shall give preference to the Aleutian Housing Authority as general contractor. For purposes of this subsection, "churches or church property" shall be deemed to be "public facilities" as described in AS 18.55.996(b) of the laws of the State of Alaska.

(4) There are authorized to be appropriated to the Fund $1,399,000 to carry out the purposes of this subsection.

(d) ADMINISTRATIVE AND LEGAL EXPENSES.—The Administrator is authorized to incur reasonable and necessary administrative and legal expenses in carrying out its responsibilities under this title. There are authorized to be appropriated to the Fund such sums as may be necessary for the Secretary to compensate the Administrator, not less often than quarterly, for all such reasonable and necessary administrative and legal expenses.

INDIVIDUAL COMPENSATION OF ELIGIBLE ALEUTS

SEC. 307. (a) PAYMENTS TO ELIGIBLE ALEUTS.—(1) In accordance with the provisions of this section, the Secretary shall make per capita payments out of the Fund to eligible Aleuts for uncompensated personal property losses, and for other purposes. The Secretary shall pay to each eligible Aleut the sum of $12,000. All payments to eligible Aleuts shall be made within one year after the date of enactment of this Act.

(2) The Secretary may request, and upon such request, the Attorney General shall provide, reasonable assistance in locating eligible Aleuts residing outside the affected Aleut villages. In providing such assistance, the Attorney General may use available facilities and resources of the International Committee of the Red Cross and other organizations.

(3) The Administrator shall assist the Secretary in identifying and locating eligible Aleuts pursuant to this section.

(4) Any payment made under this subsection shall not be considered income or receipts for purposes of any Federal taxes or for purposes of determining the eligibility for or the amount of any benefits or assistance provided under any Federal program or under any State or local program financed in whole or part with Federal funds.

(b) AUTHORIZATION.—There are authorized to be appropriated to the Fund such sums as are necessary to carry out the purposes of this section.

SUPPLEMENTAL CLEANUP OF WARTIME DEBRIS

SEC. 308. (a) The Congress finds that the Department of Defense has implemented an ongoing program for the removal and disposal of live ammunition, obsolete buildings, abandoned machinery, and other hazardous debris remaining in populated areas of the lower Alaska Peninsula and the Aleutian Islands as a result of military activities during World War II. Such program is being accomplished pursuant to Acts making appropriations for the Department of Defense, in accordance with congressional statements of purpose in establishing and funding the Environmental Restoration Defense Account. The authority contained in this section shall be supplemental to the authority of the Secretary of Defense in administering the Environmental Restoration Defense Account, and shall be exercised only in the event that such account is inadequate to eliminate hazardous military debris from populated areas of the Lower Alaska Peninsula and the Aleutian Islands.

(b) CLEANUP PROGRAM.—Subject to the terms and conditions of subsection (a), the Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to plan and implement a program, as the Chief of Engineers may deem feasible and appropriate, for the removal and disposal of live ammunition, obsolete buildings, abandoned machinery, and other hazardous debris remaining in populated areas of the lower Alaska Peninsula and the Aleutian Islands as a result of military construction and other activities during World War II. The Congress finds that such a program is essential for the further development of safe, sanitary housing conditions, public facilities, and public utilities within the region.

(c) ADMINISTRATION OF PROGRAM.—The debris removal program authorized under subsection (a) shall be carried out substantially in accordance with the recommendations for a minimum cleanup contained in the report prepared by the Alaska district, Corps of Engineers, entitled "Debris Removal and Cleanup Study: Aleutian Islands and Lower Alaska Peninsula, Alaska", dated October 1976. In carrying out the program required by this section, the Chief of Engineers shall consult with the trustees of the trust established by section 306(b) of this Act, and shall give preference to the Aleutian Housing Authority as general contractor.

(d) AUTHORIZATION.—There are authorized to be appropriated $15,000,000 to carry out the purposes of this section.

ATTU ISLAND RESTITUTION PROGRAM

SEC. 309. (a) In accordance with section 3(c) of the Wilderness Act (78 Stat. 892) and section 702(1) of the Alaska National Interest Lands Conservation Act (94 Stat. 2417), the public lands on Attu Island, Alaska, within the National Wildlife Refuge System are designated as wilderness. In order to make restitution for the loss of traditional Aleut lands and village properties on Attu Island, while preserving the present designation of Attu Island lands as part of the National Wilderness Preservation System, compensation to the Aleut people in lieu of Attu Island conveyance shall be provided in accordance with this section.

(b) The Secretary of the Treasury shall establish an account designated "The Aleut Corporation Property Account", which shall be available for the purpose of bidding on

Federal surplus property. The initial balance of the account shall be $17,868,500, which reflects an entitlement of $500 for each of the thirty-five thousand seven hundred and thirty-seven acres within that part of eastern Attu Island traditionally occupied and used by the Aleut people for subsistence hunting and fishing. The balance of the account shall be adjusted as necessary to reflect successful bids under subsection (c) or other conveyances of property under subsections (f) and (g).

(c) The Corporation may, by using the account established in subsection (b) bid, as any other bidder for surplus property, wherever located, in accordance with the requirements of section 484 of title 40, United States Code. No preference right of any type may be offered to the Corporation for bidding for General Services Administration surplus property under this subsection and no additional advertising shall be required other than that prescribed in section 484(e)(2) of title 40, United States Code.

(d) The amount charged against the Treasury account established under subsection (b) shall be treated as proceeds of dispositions of surplus property for the purpose of determining the basis for calculating direct expenses pursuant to section 485(b) of title 40, United States Code.

(e) The basis for computing gain or loss on subsequent sale or other disposition of property conveyed to the Corporation under this section for purposes of any Federal, State, or local tax imposed on or measured by income, shall be the fair value of such property at the time of receipt. The amount charged against the Treasury account established under subsection (b) shall be prima facie evidence of such fair value.

(f) The Administrator of General Services may, at the discretion of the Administrator, tender to the Secretary of the Treasury any surplus property otherwise to be disposed of pursuant to section 484(e)(3) of title 40, United States Code, to be offered to the Corporation for a period of ninety days so as to aid in the fulfillment of the Secretary of the Treasury's obligations for restitution to the Aleut people under this section, except that before any disposition under this subsection or subsection (g), the Administrator shall notify the governing body of the locality where such property is located and any appropriate state agency, and no such disposition shall be made if such governing body or State agency within ninety days of such notification formally advises the Administrator that it objects to the proposed disposition.

(g)(1) Notwithstanding any provision of any other law or any implementing regulation inconsistent with this subsection, concurrently with the commencement of screening of any excess real property, wherever located, for utilization by Federal agencies, the Administrator of General Services shall notify the Corporation that such property may be available for conveyance to the Corporation upon negotiated sale. Within fifteen days of the date of receipt of such notice, the Corporation may advise the Administrator that there is a tentative need for the property to fulfill the obligations established under this section. If the Administrator determines the property should be disposed of by transfer to the Corporation, the Administrator or other appropriate Federal official shall promptly transfer such property.

(2) No disposition or conveyance of property under this subsection to the Corporation shall be made until the Administrator of General Services, after notice to affected State and local governments, has provided to them such opportunity to obtain the property as is recognized in title 40, United States Code, and the regulations thereunder for the disposition or conveyance of surplus property.

(3) As used in this subsection, "real property" means any land or interests in land owned or held by the United States or any Federal agency, any improvements on such land or rights to their use or exploitation, and any personal property related to the land.

(h) The Secretary of the Interior may convey to the Corporation the traditional Aleut village site on Attu Island, Alaska, pursuant to the authority contained in section 1613(h)(1) of title 43, United States Code, except that on or after the date of enactment of this section, no site on Attu

Island, Alaska, other than such traditional Aleut village site, shall be conveyed to the Corporation pursuant to such section 1613(h)(1) of title 43, United States Code.

SEPARABILITY OF PROVISIONS

SEC. 310. If any provision of this title, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this title or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

BROCK ADAMS
WASHINGTON

United States Senate
WASHINGTON, DC 20510

June 17, 1987

TESTIMONY OF U.S. SENATOR BROCK ADAMS REGARDING S. 1009, BEFORE THE SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE.

Mr. Chairman, members of the Senate Subcommittee on Federal Services, Post Office and Civil Service, Senator Matsunaga, distinguished panelists and guests. As a co-sponsor to S. 1009 introduced by my friend and colleague the distinguished Senator from the state of Hawaii, Senator Spark Matsunaga, I am deeply honored to sit before you and speak on behalf of this bill.

S. 1009, provides for a legislative remedy to an ugly wartime mistake in American history: The unjust and illegal incarceration of 120,000 Americans and resident aliens of Japanese ancestry.

Mr. Chairman, I do not come before you to argue fine points of law. Nor to describe the wrenching indignity of mass incarceration, economic loss and emotional deprivation that others in this room can more eloquently speak to. Rather, I come before you as an American citizen who believes that if we cannot seek justice for others in need, it is quite possible that it might not be there if and when our calling comes.

I was there in Broadway High School in central Seattle when one-third of our student body was suddenly gone. My friends and fellow students, Shig Murao, Joann Okamota and so many others simply vanished from my life.

As I sit here and ponder the depths of this historic error, I am struck by the number of reasons why this committee and the Senate must assertively act to pass this legislation. The Senator from Hawaii, and the distinguished panel sitting before you will expound on each of these and other determinants. Nonetheless, I would like to touch on them from my own perspective.

First, justification for this bill could easily rest on a premise of unlawful and unconstitutional acts. When as legislators we determine where the lines are to be drawn and where the points are to be fixed, the rules have been defined for all to follow. But when we allow the objective standard to waver under pressures of human bias, subjectivity creeps in, and we move into creating dangerous precedent for all of us. In this particular case I think it is safe to say that the objective standard in 1942 was utterly destroyed in an instant. In that summer and early fall, a mass roundup of citizens occurred, primarily Americans, without due process of law: warrents, trials or hearings.

Individuals like Mr. Gordon Hirabayashi, Mr. Fred Korematsu, Mr. William Hohri, who is present here today, and the late Mr. Min Yasui, are now seeking a correct judicial interpretation of what occurred in those fateful years. Nevertheless, it will never compensate them for what they and 120,000 other American citizens and resident aliens were forced to endure.

Second, redress, as defined in S. 1009, could be based on pure economic and emotional loss. Millions of dollars in farm property, fishing equipment, small businesses, homes, cars, furniture and other personal property were either left where they stood or sold for a fraction of their real price. The emotional loss is of course even more devasting. How does one measure the loss of dignity, the anger of injustice, or the fear of never seeing your family again? The suffering was immense. The loss, incalculable.

Or, third, this bill could rest on the debt this country owes to those who served and died fighting for freedoms which were ironically and catagorically denied their own families. Approximately 33,000 Nisei, second generation Japanese Americans, served in the military during World War II. Two of my own colleagues serving with me in this body, along with individuals sitting on this panel can better attest to the heroics and ultimate payments that they, their friends, and comrades in arms made. Suffice it for me to say that this country must long remember the sacrifice of these men. A true debt has been laid on our doorstep.

All of these truths are more than adequate to support the passage of this important legislation. Nevertheless, I would like to add one more reason I have come before you as an active and interested co-sponsor. It is a reason based not on what is legally correct, but rather on, what is fair and just. It is the simple human emotions and personal experience of a high school student watching friends and classmates driven from their homes and pulled out of their schools by U.S. Army troops, learning that their destination was the remote deserts of the western United States. Accordingly, in the end, I come before you not only because of inherent intellectual truths, but also, for what must be effectively expressed.

The long time citizens of the state of Washington are coming to grips with their past. Though history cannot be unmade, mistakes can be acknowledged. The Washington State Legislature, City of Seattle and the Seattle School District have all passed a form of redress and reparations legislation. I am proud to say that with the assistance of people like Mrs. Cherry Kinoshita, Mrs. Masi Tomita, and Mrs. Teresa Takiyoshi, my state has moved in the direction of what is just and necessary.

As a local paper in the City of Spokane, Washington recently stated, "It is time to affirm our national character, right the wrong, erase the ugly precedent from our lawbooks and clear our collective American conscience."

I thank you Mr. Chairman, the Committee, Senator Matsunaga and this distinguished panel for allowing me the time to present my views on what I believe is an historic and monumental bill.

TESTIMONY OF SENATOR FRANK H. MURKOWSKI
BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE AND FEDERAL SERVICES
WEDNESDAY, JUNE 17, 1987

MR. CHAIRMAN, THANK YOU FOR SCHEDULING THIS HEARING TODAY.

LEGISLATION TO COMPENSATE THE MANY AMERICANS WHO SUFFERED INJUSTICES AS A RESULT OF INTERNMENT DURING WORLD WAR II HAS BEEN INTRODUCED IN THE LAST THREE CONGRESSES. THIS YEAR'S SENATE BILL HAS 73 CO-SPONSORS AND THIS STRONG SUPPORT INDICATES THAT OUR EFFORTS TO PASS THIS MUCH NEEDED LEGISLATION WILL FINALLY BE SUCCESSFUL.

MR. CHAIRMAN, I WILL CONFINE MY REMARKS TODAY TO THE ALEUT COMPENSATION PROVISIONS OF THE BILL. I ALSO SUPPORT CONSPENSATION FOR THE JAPANESE-AMERICANS WHO WERE INTERNED, AND THERE ARE MANY OTHER WITNESSES HERE WHO WILL TESTIFY IN SUPPORT OF THOSE IMPORTANT SECTIONS OF THE BILL.

IT IS BEYOND QUESTION THAT THE ALEUTS SUFFERED PERSONAL AND ECONOMIC LOSSES DURING THEIR INTERNMENT. RATHER THAN GENERALIZING ABOUT THESE LOSSES, I WANT TO SHARE WITH YOU TODAY THE EXPERIENCE OF ONE OF MY CONSTITUENTS, MARY BOURDUKOFSKI, AS A

SPECIFIC EXAMPLE OF HOW INDIVIDUALS WERE AFFECTED BY THE INTERNMENT.

ON A SUNDAY AFTERNOON IN 1941, NAVY BOATS ARRIVED OFF THE COAST OF ST. PAUL ISLAND, THE VILLAGE WHERE MARY LIVED IN ALASKA. SHE WAS TOLD THAT THE BOATS WERE THERE TO EVACUATE THE VILLAGE RESIDENTS FROM THE ISLAND AND THAT SHE COULD NOT TAKE ANYTHING BUT WHAT SHE WAS WEARING AND A SUITCASE OF PERSONAL ITEMS. MARY RECALLS SHE TRIED TO PUT AWAY PERSONAL BELONGINGS SUCH AS ANTIQUES THAT HAD BELONGED TO HER MOTHER, BUT WAS NOT GIVEN TIME TO DO SO. SHE WAS TOLD TO LEAVE HER HOME AND NOT TO LOCK THE DOOR. WITHIN 12 HOURS, ALL 500 RESIDENTS OF ST. PAUL WERE EVACUATED. THE BOAT THEN PICKED UP ALL THE RESIDENTS OF ST. GEORGE AND OTHER RESIDENTS OF THE ALEUTIAN ISLANDS AND THE ALASKA PENINSULA. AFTER TEN DAYS ON THE BOAT, THE NEARLY 800 INDIVIDUALS WERE TAKEN TO ABANDONED CANNERIES AND MINES THROUGHOUT SOUTHEASTERN ALASKA WHERE CAMPS WERE ESTABLISHED.

AT THE CAMPS, MARY DESCRIBES THE LIVING CONDITIONS AS "TERRIBLE." THE ONLY RUNNING WATER IN THE FUNTER BAY CAMP WHERE SHE WAS LOCATED WAS IN THE MESS HALL. THERE WERE NO ROOMS, AND PARTITIONS WERE ESTABLISHED BY HANGING BLANKETS FROM THE CEILING IN ORDER TO GAIN SOME PRIVACY. THERE WAS NO STOVE TO COOK FOOD. THE UNSANITARY CONDITIONS AND INADEQUATE SHELTER LEAD TO A SUBSTANTIAL NUMBER OF DEATHS. AT FUNTER BAY ALONE, IT IS ESTIMATED 40 PEOPLE DIED.

AFTER TWO YEARS OF LIVING IN THESE CONDITIONS, MARY AND THE SURVIVING ALEUTS WERE RETURNED TO THEIR VILLAGES. MARY FOUND HER HOME HAD BEEN CONVERTED INTO A CLUB WHERE THE ONLY ITEMS LEFT IN THE HOUSE WERE A POOL TABLE, DART BOARD, AND A STOVE. ALL OF HER PERSONAL EFFECTS, INCLUDING HER MOTHER'S ANTIQUES, WERE GONE.

MARY'S EXPERIENCE IS NOT UNIQUE, APPROXIMATELY 881 RESIDENTS OF ALASKA SUFFERED SIMILAR LOSSES AND THEY ARE ALL ENTITLED TO COMPENSATION.

THE LEGISLATION THIS COMMITTEE IS CONSIDERING TODAY PROVIDES THAT COMPENSATION. IT IMPLEMENTS THE RECOMMENDATIONS OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS BY ESTABLISHING THE FOLLOWING REMEDIES:

--ESTABLISHMENT OF AN ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION FUND TO COMPENSATE COMMUNITIES FOR LOSSES SUFFERED;

--AUTHORIZATION OF INDIVIDUAL COMPENSATION FOR THOSE ALEUTS WHO WERE INTERNED;

--COMPENSATION FOR THE LOSS OF ATTU ISLAND; AND,

--CLEAN UP OF WAR TIME DEBRIS ON THE ALEUTIAN ISLANDS.

MORE THAN FORTY YEARS HAVE PASSED SINCE THE ALEUTS WERE RELOCATED TO THE INADEQUATE CAMP FACILITIES IN SOUTHEASTERN

ALASKA. A NUMBER OF THOSE WHO SUFFERED THE MOST ARE QUITE ELDERLY---AN EVEN GREATER NUMBER HAVE ALREADY PASSED AWAY. THUS, I URGE THE SENATE TO CONSIDER THIS LEGISLATION PROMPTLY. THE RESTITUTION PROVIDED IN OUR BILL SHOULD NOT BE DELAYED ANY LONGER.

I THANK THE CHAIRMAN FOR THE OPPORTUNITY TO TESTIFY ON THIS LEGISLATION.

PREPARED STATEMENT OF SENATOR CRANSTON

Mr. Chairman, I am delighted to be here today to speak in support of S. 1009, for redress of one of our Government's greatest acts of injustice. This legislation would implement the recommendations of the Commission on Wartime Relocation and Internment. It was introduced in the 99th Congress as S. 1053, and as S. 2116 in the 98th Congress. I am delighted to note the increasing number of co-sponsors of this historic legislation.

As we look back with regret on this painful period of injustice - 45 years ago- we must reaffirm our pledge that this kind of injustice must never recur.

Enactment of this legislation will help to prevent a recurrence.

My involvement in opposing the relocation of Japanese Americans dates back to the very beginning.

I believe that our Government's action in this case was a terrible affront to the ideals for which our Nation stands.

Shortly after Pearl Harbor, I was assigned to the Office of War Information. There I worked closely with Eleanor Roosevelt and Archibald MacLeish trying to dissuade President Roosevelt from forcefully evacuating Japanese-Americans from the west coast and interning them in so-called relocation camps.

Unfortunately for 120,000 Japanese-Americans - and for the good name of our Nation - military authorities prevailed, and the orders for internment were issued.

More than two-thirds of the internees were American citizens. The rest were legal U.S. residents.

After the internment process began, I visited two of the camps, Tule Lake in California and Hart Mountain, Wyoming. Recently, the children of internees visited Hart Mountain trying to sense what their parents had felt. In part I can tell them.

For 4 days in the cold, snow-covered camp at Hart Mountain, I spent my time round the clock inside the barbed-wire camp, talking to internees and visiting with a number of boyhood friends from Los Altos.

We ate meals together, talked over old times, walked around in the bitingly cold weather, played poker - in wanton violation of camp rules - and cheered at a football rally.

My friends and former classmates justifiably felt themselves robbed of their citizenship. They were distressed at the racial prejudice behind their internment. They were anxious for their Government to prove its own adherence to democracy and to the very ideals for which we were then at war.

President Roosevelt himself proclaimed, "In vindication of the very ideals for which we are fighting this war it is important to us to maintain a high standard of fair, considerate and equal treatment for the people of this minority as for all other minorities."

But this standard was not upheld.

The mere presence of Japanese blood in loyal American citizens was believed to be enough to warrant removal and exclusion from places they otherwise had a right to go.

The argument that they were removed for their own good, because of possible vigilante attacks, was not persuasive. Most, if not all, Japanese Americans would rather have faced the risk of being killed by individuals than deprived of their liberties by their own American Government. And given the choice to remain interned or fight in the war, most enlisted and served.

One of my most poignant memories is of an intelligent and progressive-minded mother who was still managing - with much difficulty - to conceal from her 4-year old child that they were prisoners in what most inmates considered a racial internment camp.

It was ironic to see American Nisei soldiers, home on furlough and clad in uniform, wandering around inside a fenced-in camp. These Nisei soldiers returned from the battlefields of Europe as the most distinguished and decorated combat unit of the war, and from the Pacific theater as loyal soldiers and as officers in military intelligence. I have never forgotten these impressions.

In 1980, I was a cosponsor of the legislation establishing the Relocation Commission. The Commission report issued in 1983 amounted to our Government's official apology - 41 years overdue- to the internees and their families.

It confirmed what a great many conscientious Americans have long believed: these Americans of Japanese descent were clearly mistreated, and their basic civil liberties violated.

The ACLU singled out the internment and related abuses at the time as "the worst single wholesale violation of civil rights of American citizens in our history."

As one commentator on the period said, "Japanese-Americans were the immediate victims of the evacuation. But larger consequences are carried by the American people as a whole. Their legacy is the lasting one of precedent and constitutional sanctity for a policy of mass incarceration under military auspices. This is a result of the process by which the evacuation was made. That process betrayed all Americans."

Since those tragic events took place, a number of the participants have had changed hearts and minds. Henry L. Stimson, who was Secretary of War, realized that "to loyal citizens this forced evacuation was a personal injustice." Former Attorney General Francis Biddle reiterated his belief that "the program was ill-advised, unnecessary and unnecessarily cruel." Justice William O. Douglas, one of the Supreme Court majority in the Korematsu decision holding the evacuation constitutionally permissible, later said the case "was ever on my conscience." And Chief Justice Earl Warren, who as California's attorney general had urged evacuation, afterward said, "I have since deeply regretted the removal order and my own testimony advocating it, because it was not in keeping with our American concept of freedom and the rights of citizens."

On February 17, 1942, Attorney General Francis Biddle wrote to Secretary Stimson opposing the proposed exclusion order, stating that the War Department and the FBI had found no danger of imminent attack or evidence of planned sabotage. Biddle especially objected to removal from their homes of 60,000 American citizens who happened to be of Japanese descent. He refused to let the Justice Department participate in any way with the exclusion policy.

Not a single documented act of espionage, sabotage, or fifth column activity was committed by the Nisei or by resident Japanese aliens on the west coast. Yet their lives were disrupted, fortunes were lost, and loyal citizens and legal residents incarcerated.

The victims of this policy were held collectively guilty, and collectively punished.

Moreover, the Government's attitude toward these innocent people fostered suspicions that often led to violence against them. Many were attacked when they attempted to return to their homes 3 years later.

The legislation you are considering today redresses this mass violation of civil liberties and compensates internees for their suffering.

While the loss of liberty and the personal stigma attached to internment can never be erased, Federal reparations are a justifiable response to the legitimate financial losses incurred. An independent study done for the Commission found the economic losses alone to evacuees between $2.5 and $6.2 billion in today's dollar values, including interest for the past 40 years. Many consider this a conservative estimate of the real economic losses of homes and other property, stores and businesses. And these estimates do not begin to measure the personal hardships suffered.

The Commission found the cause of the exclusion and interment policies to be "race prejudice, war hysteria and a failure of political leadership."

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066. Shortly afterward, all American citizens of Japanese descent were barred from living, working, or traveling on the west coast. The same exclusion applied to a whole generation of Japanese immigrants residing at that time in the United States who, because of Federal law, were not permitted to become U.S. citizens.

After the initial plan for "voluntary" exclusion failed, these American citizens or legal residents were forcibly removed by the Army, first to assembly centers" - makeshift quarters in fairgrounds and racetracks - and then to "relocation centers." These latter camps, located in desolate western areas, were surrounded by barbed wire and guarded by military police.

The U.S. Government carried out its policy without reviewing individual cases or providing due process of law, and continued its policy virtually without regard for individuals who demonstrated loyalty to the United States.

Congress made it a crime to violate Executive Order 9066. The U.S. Supreme Court - in one of its most agonizing decisions - held the removal constitutionally permissible because of the war. Interestingly, since that decision a number of Justices from the majority - enough to have reversed the 5-4 decision - have written that on hindsight, they would have voted differently. The Supreme Court in a related case struck down imprisonment of these admittedly loyal American citizens. But long after the fact.

The Commission found that the main impetus leading to the exclusion order was the mistaken notion that individuals of Japanese descent would be loyal to Japan, not to the United States, and groundless fears of fifth column activity even though no evidence of such activities could be uncovered. The Commission stated that "the record does not permit the conclusion that military necessity warranted the exclusion of the ethnic Japanese from the west coast."

After exclusion became official policy, the War Relocation Authority [WRA] - the civilian agency charged with supervising the relocation - assumed that the vast majority of evacuees were loyal and should be allowed to resettle outside of the west coast. But because of harsh objections from certain mountain State politicians, a consensus plan for detention of the evacuees emerged. The WRA gave up on its idea of resettlement, and accepted a program of confinement. Despite WRA's belief that evacuees should be returned to normal productive life, it had, in effect, become their jailer. Since there was no military justification for detention, the WRA instead contended that the program was for the evacuees' own safety.

The history of life during the evacuation and in the relocation camps is one of suffering and deprivation. On the average, families received only 1 or 2 weeks notice of evacuation o an unknown destination. They could take with them only what could be carried. All else was lost or sold for cut-rate prices. Life in the relocation camps was spartan, with shoddy and crowded buildings, defective facilities, faulty heating, inadequate health care, and limited education programs. Privacy was impossible. Families and individuals alike lost their identities and became known only by identification numbers.

Because the Western Defense Command opposed individual loyalty reviews - for fear of weakening the blanket exclusion - no opportunity for individual review was created in the assembly centers. The War Department favored conducting loyalty reviews, but did not act on this until the end of 1942. Although these reviews eventually permitted some to leave relocation centers, it didn't end the exclusion from the west coast. Moreover, even this belated process was offensive, since it treated Japanese Americans as guilty until proven innocent.

In the spring of 1943, Secretary of War Henry L. Stimson, Assistant Secretary of War John McCloy, and Gen. George C. Marshall reached the conclusion that the loyalty reviews eliminated any justification for exclusion from the west coast. They kept their views private, however, and General DeWitt repeatedly opposed ending exclusion until he left the Western Defense Command in late 1943, as did west coast anti-Japanese fractions. Secretary Stimson finally put the recommendation before the Cabinet in May 1944. But no action was taken until December 7, 1944, while confinement continued for the great majority of Japanese Americans.

The exclusion and removal of Japanese-Americans resulted from a long history of anti-Japanese-American agitation and legislation on the west coast. By contrast, in Hawaii, where the military commander restrained plans for radical measures and treated the ethnic Japanese as loyal residents - absent evidence to the contrary - only 2,000 ethnic Japanese were taken into custody. The policy developed was in sharp contrast to Government actions against enemy aliens or citizens of non-Japanese descent. For example, the United States never ordered a mass exclusion or detention against American citizens of German or Italian descent.

This episode in American history should never have happened. It's the Government's responsibility to set the record straight and to try, at least, to recognize and partially compensate for past injustices, although the tarnish on our Constitution can never be completely removed.

Our purpose is to recognize and redress the injustices and violations of civil liberties against U.S. citizens and U.S. residents of Japanese and Aleut ancestry by the United States and to discourage similar injustices and violations of civil liberties in the future.

The bill provides for the establishment of a $1.5 billion trust fund from which individual payments to the surviving internees would be made.

Those eligible are people of Japanese or Alaskan Aleut ancestry excluded from the west coast between December 7, 1941, and June 30, 1946, or deprived of liberty or property as a result of a series of Executive orders, proclamations, laws, Armed Forces directives, or other Federal actions resulting in exclusion, relocation, and/or detention of individuals on the basis of race. The remaining monies in the Trust Fund would be utilized for humanitarian and public education efforts to preclude this event from occurring again in the future.

This act is a just and fair redress to those individuals who were excluded and/or interned without justification, in gross violation of their civil liberties as American citizens and residents. I urge my colleagues to support it.

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Statement by

HARRY KAJIHARA

National President
Japanese American Citizens League

In support of S. 1009
A Bill to Accept the Findings and Implement the Recommendations of the Commission on Wartime Relocation and Internment of Civilians

Submitted to the

United States Senate
Committee on Governmental Affairs

Subcommittee for
Federal Services, Post Office, and Civil Service

June 17, 1987
Washington, D.C.

Mr. Chairman and members of the Subcommittee, as National President of the Japanese American Citizens League (JACL), I appreciate the opportunity to testify in support of S. 1009, a bill to accept the findings and implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

Founded in 1929, the JACL is the oldest and largest national organization representing the interests and concerns of Americans of Japanese ancestry. During our 58 years of existence, the JACL has been instrumental in overturning hundreds of discriminatory federal and state laws including those which prohibited persons of Japanese ancestry from citizenship, land ownership, fair housing, employment and voting. We are dedicated to protecting the civil and human rights not only of Japanese Americans, but of all people. It is with this sense of justice and fairness that in the 1980's we pursue passage of S. 1009.

The JACL campaign to seek redress on behalf of the 120,000 loyal Americans of Japanese ancestry interned during World War II was undertaken with the hope that our success would lead to establishing a measure of assurance that such violations of constitutional rights would not be inflicted upon any other group of citizens in the future. Redress for the victims of the internment remains the "unfinished business" for Japanese Americans and the JACL.

In this spirit, the JACL became the chief proponent in the establishment of the Commission on Wartime Relocation and Internment of Civilians in 1979. The Commission's report, PERSONAL JUSTICE DENIED, released in 1983, was the first governmental investigation of the abrogation of the constitutional rights of American citizens during World War II.

The JACL and the Japanese American community nationwide welcomed the Commission's report which finally and officially recognized that "a grave personal injustice was done to the American citizens and resident aliens of Japanese ancestry."

Further, we supported the five-point recommendation of the Commission which includes an official apology, individual monetary compensation and the establishment of an educational and humanitarian trust fund.

Since 1983, we have been seeking passage of legislation which would accept and implement the findings and recommendations of the Commission on Wartime Relocation and Internment of Civilians. S. 1009, is an important and good bill. The bill provides for the creation of a trust fund which can serve as a lasting reminder of the injustice suffered by an entire ethnic group. At the same time, S. 1009 recognizes the individuals who suffered as well. Each individual has a right to redress and that right cannot legitimately be taken away.

Much attention has been placed upon the proposed $20,000 compensation to individuals interned. The question has been posed: What is the price of freedom?

The Commission debated this same issue and concluded: "No amount of money can fully compensate the excluded people for their losses and sufferings. Two-and-a-half years behind barbed wire of a relocation camp, branded potentially disloyal because of one's ethnicity alone...these injustices cannot neatly be translated into dollars and cents....It is well within our powers, however, to provide remedies for violations of our own laws and principles."

It does not seem unreasonable to award $20,000 for two to three years of lost freedom without justifiable cause and without due process as guaranteed by the Fifth Amendment of the Bill of Rights. The basis of American jurisprudence is founded upon the principle of monetary redress for lost freedom. At best, the $20,000 represents only partial compensation for actual losses incurred.

I am reminded that the Japanese American Claims Act of 1948 compensated only a small and inadequate fraction of the property losses.

According to the Commission's analysis of economic losses:

> It is estimated that, as a result of the exclusion and detention, in 1945 dollars the ethnic Japanese lost between $108 and $164 million in income and between $41 and $206 million in property for which no compensation was made after the war under the terms of the Japanese American Evacuation Claims Act. Adjusting these figures to account for inflation alone, the total losses of potential income and property fall between $810 million and $2 billion in 1983 dollars."

The Evacuation Claims Act did not provide inflation adjustments or interest and placed an unreasonable burden of proof on the claimants. The result was a mere $37 million or an average reimbursement payment of $200.00 per family.

However, S. 1009 is not an attempt to recover property losses or lost income. S. 1009 seeks not to recover that which cannot be recovered but rather, to acknowledge a grievous mistake of the past by providing meaningful restitution. In essence, our claim is based upon the loss of our basic constitutional rights as citizens of this country.

More than 45 years have passed since President Franklin Roosevelt signed Executive Order 9066, the authorization used for the sole purpose of removing and imprisoning Japanese Americans.

Time is a great healer. Yet, we shall never forget the experience - men, women and children - branded disloyal by our own government, evicted from our own homes, businesses, communities, tagged and numbered with shipping labels, sent to live in horse stalls and later, to desolate camps surrounded by barbed wire and armed sentry guards. The incalculable property losses seem unimportant to the personal affront to human values and the democratic ideals of our nation.

In the bicentennial celebration of the U.S. Constitution, let us remember that as citizens, all of us are responsible for the acts of our Government. As a nation and as individuals, we are the products of the past. As citizens, we inherit the responsibilities, the debts, as well as the benefits passed on to us by our ancestors.

Let us celebrate the 200th year of our nation's founding document by remedying this forty-five year old injustice. Let us signal to the world that the United States does carry out in practice the ideals embodied in our Constitution and Bill of Rights. And by so doing, we will be insuring that the United States Constitution is upheld in the future.

Mr. Chairman and members of the subcommittee, on behalf of the Japanese American Citizens League, I urge adoption of S. 1009.

Respectfully submitted,

Harry Kajihara

Harry Kajihara
National President
Japanese American Citizens League

JACL-LEC JAPANESE AMERICAN CITIZENS LEAGUE
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STATEMENT OF THE LEGISLATIVE EDUCATION COMMITTEE OF THE JAPANESE AMERICAN CITIZENS LEAGUE

TO THE

SUBCOMMITTEE ON FEDERAL SERVICE, POST OFFICE
AND CIVIL SERVICE
UNITED STATES SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS

IN SUPPORT OF S. 1009

June 17, 1987
WASHINGTON, D.C.

Submitted by:

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SUMMARY OF
TESTIMONY STATEMENT

OF

GRAYCE KANEDA UYEHARA

JAPANESE AMERICAN CITIZENS LEAGUE
LEGISLATIVE EDUCATION COMMITTEE

I. Statement of Jerry Enomoto, Chairman of JACL-LEC

II. Brief Background for S. 1009

III. The Recommendations of the Commission on Wartime Relocation and Internment of Civilians - Basis of S. 1009

IV. Section 205 of S. 1009, Restitution

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    1. Questions about the propriety of individual payments
    2. The Japanese Evacuation Claims Act
    3. Claims for similarly situated Groups
    4. Payment by the current generation
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  B. Examples of Payments for Loss of Freedom
    1. War Claims Act of 1948
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  C. Individual Payment Guidelines
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VI. Other Contemporaneous Issues

  A. Smithsonian Exhibit at the National Museum of American History

  B. "Dear Editor" letter from Messrs. Hayakawa, Lowman and Doleman

  C. Supreme Court case: United States v. Hohri, 86-510

V. Conclusion - Time to right the injustice is now.

I am Grayce Kaneda Uyehara of West Chester, Pennsylvania. I serve as the Executive Director of the Japanese American Citizens League-Legislative Education Committee (JACL-LEC) in Washington, D.C. I spent time in the Stockton Assembly Center and the Rohwer Relocation Center in Arkansas.

Both the JACL and the LEC have authorized me to testify in support of S. 1009, a bill to accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians, introduced in the United States Senate by Senator Spark Matsunaga of Hawaii on April 11, 1987.

Jerry Enomoto, chairman of the board of JACL-LEC, who is unable to attend this hearing, has sent his statement to be included as part of this testimony.

I would like to take a moment to recognize with great sadness and a heavy heart that Minoru Yasui, who served as chairman of the LEC and earlier as chairman of the JACL National Redress Committee, is not here next to us at this hearing. Minoru Yasui died last November at the age of 70. He dedicated the last years of his life petitioning our government to redress the personal injustice to Japanese Americans. He was one of three who had the courage and conviction to test the constitutionality of Executive Order 9066 in 1942 and for his commitment to basic American values and principles went to prison, spending nine months in solitary confinement. The death of Yasui brings us to the inevitable truth.

Each passing day diminishes the list of less than 60,000 survivors from the 120,000 who lost their individual dignity and freedom in totally un-American relocation centers.

W. H. Auden wrote the words that express the need for redress; to acknowledge the injustice and to make amends:

> We are left alone with our day, and the time is short
>   and History to the defeated
> May say Alas but cannot help or pardon.

We sincerely hope that Auden's words will not be the epitaph to Executive Order 9066 which sent Japanese Americans to desolate, desert areas of the West and the swamps of Arkansas from 1942 to 1946. We also sincerely hope that the legislators who guard our freedoms will recognize that the rights of everyone are jeopardized unless each individual's rights are protected.

* * *

In 1980, Congress established the Commission on Wartime Relocation and Internment of Civilians to review the facts and circumstances surrounding Executive Order 9066, issued February 19, 1942, to assess the impact and effects of that Order, and to recommend appropriate remedies.

The December, 1982 report of the Commission, issued in February 1983, unanimously found that the exclusion and detention of approximately 120,000 Americans of Japanese ancestry and resident aliens were grave injustices. The action was not based on military necessity but rather because of race prejudice, war hysteria and lack of political leadership.

The injustice of the removal, incarceration and relocation of Japanese Americans is conceded by all responsible people and groups, including the U.S. Department of Justice.

On April 20, Solicitor General Charles Fried of the Department of Justice told the United States Supreme Court in United States v. Hohri, 86-510, that the evacuation and incarceration of Americans of Japanese ancestry were "frankly racist." Fried argued that the decisions to exclude and incarcerate were not based upon a factual assessment of military data and intelligence reports, but on a political judgment at the "highest levels" that Japanese Americans as a group were inherently disloyal and untrustworthy. He characterized this pseudo-anthropological justification as "our shame" and openly acknowledged that the Japanese American internment was "our greatest departure" from the principles of freedom for which we were fighting in World War II.

Thousands of loyal Americans who wanted only to raise their families, enjoy the blessings of liberty and fight for their country were summarily imprisoned on the sole basis of national origin, race and ethnicity. (Attachment #1)

To regain our honor and rightful place in the American community, to take responsibility as citizens, and to ensure that the Constitution lives and works for all, we take as our mantle the people's right to petition our government for redress.

The Magna Carta of 1215 was an inspiration behind the world's most enduring document, the Constitution of the United States. The following words are apropos to redress, "No free man shall be taken, outlawed, banished, or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land." "Due process of law" and "law of the land" by the end of the 14th century were interchangeable. This principle has been the essential reality of life in the United States since the adoption of the Constitution in 1787. Tragically, in 1942 Japanese Americans were, without due process, arbitrarily presumed to be disloyal, with the racist rationale most clearly formulated by General John DeWitt, Commanding General of the Western Defense Command:

> In the war which we are now engaged racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized", the racial strains are undiluted....The very fact that no sabotage has taken place to date is a disturbing and confusing indication that such action will be taken.

General DeWitt's understanding of the need to exclude Japanese Americans from the West Coast and to detain them in circumstances that shame what we have always fought for was fully backed not only by the Roosevelt administration, but by the Congress and the Supreme Court.

William Bradford Reynolds in his speech at Vanderbilt University on May 23, 1987 said:

> Let us never forget that the Constitution is in its entirety the Supreme Law of the Land, and all the branches -- the executive, legislative and judicial -- are subordinate to it.

Therefore we must all come to recognize in good conscience that the issue which needs to be addressed today is the appropriate remedies for the victims of this great injustice.

* * *

We will first summarize the recommendations made by the Commission on Wartime Relocation and Internment of Civilians as appropriate remedies.

(1) a joint resolution of Congress, signed by the President, to acknowledge that a great injustice was done, and to offer the apologies of the nation;

(2) Review and offer of presidential pardons to all those individuals recommended by the Attorney General who were convicted of violations of military orders in connection with the evacuation, relocation and internment period;

(3) A directive to the executive agencies of the federal government to treat with liberality cases involving evacuees with respect to such matters as discharges from the armed forces of the U.S., Social Security coverage during the evacuation period, and similar matters;

(4) The creation of a trust fund, for educational humanitarian purposes, in the amount of $1.5 billion; and

(5) The payment of $20,000 to each individual now living who underwent the evacuation during 1942-46. The individual payment is to be made from the $1.5 billion trust fund.

* * *

The first three remedial actions involve very few survivors or have no notable financial impact. Consequently, there have been limited concerns raised about them.

In S. 1009 individual payments of $20,000 will be paid from a trust fund of $1.3 billion. These payments require examination so that Members of Congress will support this bill. The first question raised by some legislators is what precedent is created by the legislation? In our judgment, none. The exclusion and detention of Japanese Americans will not find parallel in American history - a subversion of the Constitution by administrative fiat. In short, there is no precedent created, because what happened was unprecedented. The second question is, what can Congress do to remedy the admission of the gross miscarriage of justice?

* * *

The JACL-LEC fully supports the remedies as found in S. 1009 as appropriate. Section 205 of the bill which addresses individual restitution states:

SEC. 205. RESTITUTION

(a) LOCATION OF ELIGIBLE INDIVIDUALS.

(1) The Attorney General, with the assistance of the Board, shall locate, using records already in

the possession of the United States Government, each eligible individual and shall pay out of the Fund to each such individual the sum of $20,000. The Attorney General shall encourage each eligible individual to submit his or her current address to the Department of Justice through a public awareness campaign.

(2) If an eligible individual refuses to accept any payment under this section, such amount shall remain in the Fund and no payment shall be made under this section to such individual at any future date.

(b) PREFERENCE TO OLDEST. - The Attorney General shall endeavor to make payment to eligible individuals who are living in the order of date of birth (with the oldest receiving full payment first), until all eligible individuals who are living have received payment in full.

(c) NONRESIDENTS. - In attempting to locate any eligible individual who resides outside the United States, the Attorney General may use any available facility or resources of any public or nonprofit organization.

(d) NO SET OFF FOR ADMINISTRATIVE COSTS. - No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any eligible individual.

(e) EXTINGUISHMENT OF CLAIMS.- The claims of an eligible individual against the United States shall be extinguished -

(A) on a date which is ten years after the date of enactment of this Act, or

(B) on the date by which the individual has received the total amount of payment under this Act, whichever first occurs.

It is recognized that no amount of money can adequately compensate the Japanese Americans for the wrongs done to them. Nevertheless, common law, the American people and the federal government itself have made it a bedrock of our legal and political system that, where governments have caused substantial injury through the deprivation of liberty or other fundamental rights, remedies should be available to the damaged or injured parties. Hence that fundamental proposition supports the rightness of monetary remedy.

Put another way, if not monetary compensation for the specifically aggrieved, what then would anyone propose as meaningful? Handwringing and expressions of regret, however sincere, will not do; and the victims, the American way, and the Constitution are shamed.

Four questions have been raised about the propriety of the monetary remedy and need to be answered:

* Didn't the Japanese-American Evacuation Claims Act pay for the losses suffered by the victims?

* Wouldn't a monetary remedy invite similar claims from other ethnic groups who were treated inhumanely and unjustly by our government?

* Why should taxpayers today be held accountable for actions of our government 45 years ago?

* Why a figure of $20,000 and how can that payment be justified?

These questions will be addressed in order.

The Japanese Evacuations Claims Act of 1948. Congress passed this Act to provide the right to make claims against the government for damages to or loss of real or personal property which occurred as a consequence of the evacuation or exclusion. About 26,000 claims were made for a total claimed amount of $148 million. $37 million was awarded.

Elaborate documentation of losses was required and the processing of claims was costly. During the first two years, only 232 claims of the 26,000 were adjudicated. The payments on these claims averaged less than $500, yet it cost the government $1,400 to process each claim. In 1951, in a subsequent amendment, the claims could be settled for the lesser of $2,500 or 75% of their value, so that 22,000 who were in dire need of funds settled for a quick resolution. In 1956, with a small number of large claims remaining, the Act was again changed to allow the Attorney General to settle for up to $100,000 and to permit contested cases to go to the Court of Claims. Five cases took this route. The claimants needed financial resources to re-establish their lives. The ICF Inc. study placed the uncompensated losses at between $1.2 billion and $3.1 billion, and at a 3 percent interest rate adjusted for inflation, from $2.5 billion to $6.2 billion.

The Evacuations Claims Act was far from a fair settling of the accounts for the real losses suffered by the Japanese Americans. More importantly, it provided nothing for the deprivation of liberty which is at the center of the redress issue, and, in more easily measurable economic terms, the amount of loss not compensated would fully justify the total sum which would be expended if each survivor of the exclusion were given a payment of $20,000.

A few legislators have suggested the individual compensation should require a separate assessment of the damages sustained by each claimant. This plan is modeled after the Bivens case. On the surface this approach might seem to be more just. However, to make a separate calculation of damages and compensation for each victim would become a mammoth project 45 years later. To examine each evacuation and incarceration experience would add legal costs and more loss of time for those who suffered from the experience. With the variation in settlements, the victims' sense of injustice will increase.

No one should have to be reminded that beyond the loss of liberty, there were other losses which greatly affected the future of each individual who spent time away from the mainstream of normal communities.

Over 30,000 evacuees were employed in the centers but jobs were not available for everyone who wanted to work. Those who worked were paid the following rates: $12 a month for unskilled, $16 for semiskilled and $19 for professionals which included physicians and teachers. Thus, families who had some savings utilized their funds to purchase personal needs. When the time came for individuals and families to relocate, they were given $25 each and train fare. Once out of camp, the Japanese Americans had to rebuild their financial and emotional lives from rock bottom. The first generation parents were by this time approaching 60 years of age; they were too old to learn new skills and had to work at low-paying unskilled jobs. Those with college educations had to accept menial positions. Those who had technical educations, in order to seek such employment with industries with government contracts, had to first receive Army and Navy clearance which delayed their entry into such employment. The reality is that most families never recouped from their financial losses.

There has been no compensation for damage to self-respect, for time lost, for advancement in jobs, for termination of education, for mental and physical suffering, and for the "stagnation of the human spirit that was occurring behind barbed wire," as noted by the field director of the National Japanese Student Relocation Council.

Claims from Similarly Situated Groups. This is the Pandora's box issue. The $20,000 payment to each individual is not to be made on an ethnic or race basis. The payments are to be made only to those individuals who were victims of the exclusion orders Executive Order 9066. This is an important point. No heirs are to receive payment. Precisely, because the original injustice was to treat everyone of Japanese descent on the basis of race without individual review or due process, it is important to remember that the principal remedy reverses this and provides compensation to those specific individuals who were victims of specific discrimination by the federal government. This answers the question whether S. 1009 would open up claims for descendants of slaves who have a claim for the long ago inhumane treatment of their ancestors.

When we look for cases of people alive today who were themselves directly injured by the federal government because of their race or ethnicity, the incarceration of Japanese Americans stands out as unprecedented.

We do not believe the monetary payment will open the way for similar claims because this bill clearly identifies the victims who were specifically and individually damaged to qualify for the symbolic compensation.

The payment will help future generations of Americans to remember that constitutional rights must never again be abrogated on the basis of race when this nation undergoes stress. Yesterday, the Japanese Americans; today, perhaps, the Arab-Americans, and tomorrow, the victim can be any one of us unless this nation is held accountable for its action.

Payment by the Current Generation. Some 60,000 of the 120,000 victims of the mass incarceration are still alive today; therefore, the payment is not for ancient wrongs.

Moreover, there are members of the "previous generation" alive today who participated in the decision-making process of 1942 and who have testified at these hearings. Then too, the question of whether the current generation is responsible for actions of the previous one is a moral one. Accordingly, it is not unjust or unfair to ask the current generation to pay for the mistakes of the past. Our nation, in the final analysis, consists of "We, the People". This nation then has collective responsibility for the decisions of the past and present. For example, in recognition of the ancient damages which resulted from slavery the federal government passed laws to open up opportunities and to enforce the civil rights of those whose ancestors had been denied equal opportunities. The current generation has a responsibility to pay into the the Social Security program to meet payments which have been obligated for the past generation of workers. Other ongoing programs of the federal government assume the same set of moral and legal obligations between past, present and future.

We can also cite the action taken by the Federal Republic of Germany where the payments continue to this day to indemnify the few survivors of Nazi Holocaust. There is no comparison between the systematic extermination of human beings, mostly Jews, to the incarceration of Japanese Americans in the United States; but both groups lost their freedom and went into confinement solely on the basis of race or ancestry. More than 40 years after the atrocities, the West German government makes restitution through individual payment to the survivors and group payments to the state of Israel.

JACL-LEC recognizes the special sensitivity and support of the American Jews to the Japanese American community's effort to seek redress from Congress. Both groups realize the ugly spectre of racism can only be held in abeyance by vigilance on the part of all of us who realize that no one knows who the next victims might be.

The present generation, if it takes the rights and responsibility of American citizenship seriously, should see that the damage to the democratic constitutional system is fully restored. By making good a wrong done to one group, future generations will be deterred from making the same mistakes.

Finally, Why $20,000? The Commission rejected alternative remedies such as setting up another claims commission to process separate calculation of damages and compensation for each victim. This conclusion was reached in recognition of the passage of time, and most importantly, that no monetary compensation plan "can fully compensate, or indeed, make the group whole again".

The symbolic individual payment of $20,000 to each surviving victim is like the story of Humpty-Dumpty. The individuals who suffered the damages from evacuation and incarceration have been broken from the tragedy of 1942, which can only be felt and understood by those who went through the shame and degradation of false imprisonment. The payment is not to repair what cannot be repaired but to make amends.

Hence, forty-five years later, the victims should not again be placed in the position of having to document their individual losses as suggested by some. The Evacuation Claims Act of 1948 clearly documents the unfairness and impossibility of that task. It is time that Congress finds the simplest method to rectify a most grievous mistake committed against people who were loyal American citizens.

Besides the impossibility of ascertaining exact damages, the $20,000 payment acknowledges in a meaningful form the unjust deprivation of liberty and the accompanying psychological and physical pain, the stigma of being branded as disloyal to an America fighting for her life, the lost hopes and the missed opportunities, and the continuing burden of self-doubt and self-hate. None of these is easily quantifiable into dollars and cents, but they are no less real and must be addressed by Congress meaningfully.

We must recognize the fact that the survivors cannot be made whole again, nor will the mammoth nature of separately calculating damages and compensation for each victim permit justice be done while the remaining survivors are still alive. Hence, JACL-LEC agrees with the Commission recommendations that the flat sum payment of $20,000 to each survivor, though arbitrary, will symbolize that this nation can recognize and rectify the mistake of imprisoning 120,000 Americans of Japanese ancestry and resident aliens. Without this symbolic action, there is no remedy.

We cannot continue to appeal this issue in Congress or in the courts for long. The survivors will not live to collect even the symbolic payment. Whatever happens, we must not be victimized further because of the forces of bigotry that assert Japanese Americans suffered no more than any other group during wartime. Some people continue to condemn Japanese Americans for the attack on Pearl Harbor or for other problems which attend our current relationship with Japan. For these people, our question is "How long before Japanese Americans become fellow Americans?" To those who seem not to understand the simple language of the Constitution and the Bill of Rights, we can only say we take our citizenship seriously, will not retreat, and will not allow false patriots to victimize us again. We are Americans.

To further support the $20,000 individual payment, we cite the following examples:

The War Claims Act of 1948. This Act compensated each civilian American citizen sixty dollars for each month the individual was held by the Imperial Japanese government during World War II. The coverage of this Act was later extended to those civilians captured in Korea, paid sixty dollars a month, and in Vietnam, compensated at $150 per month. Like the Japanese Americans in the United States, these Americans suffered a loss of bodily freedom. The difference is that Japanese Americans lost their freedom through the action of their own country.

May Day Demonstrations in Washington, D.C, 1972. The courts have also addressed both constitutional violations and false imprisonment claims in individual or in class action setting, where appropriate. In Dellums v. Powell, 566 F. 2d 167 (D.C. Cir 1977), the case which grew out of the mass arrests of demonstrators at the May Day demonstrations in Washington, D.C. 1972, the trial court awarded damages for false imprisonment on a schedule with $120 for 12 hours or less and $1800 for 48 to 72 hours of detention.

Hostage Relief Act and Anti-Terrorism Act. Individual payments are to be made to those hostages held captive as a result of terrorism throughout the world. Of the 52 Americans held hostage in Iran for 444 days, all but one were U.S. Government employees. Congress voted each of these 51 a special bonus of $50 per day for that period of captivity which comes to $22,200.

* * *

Perhaps a few words about the $20,000 individual payments should be made.

The "eligible individuals" are the living individuals who, during the evacuation, relocation, and internment period were United States citizens or permanent resident aliens and confined, held in custody, relocated or otherwise deprived of liberty or property as a result of Executive Order 9066 or any other Executive order, or any other Presidential proclamation, etc. respecting the exclusion, relocation, or detention of individuals solely on the basis of Japanese ancestry.

The JACL believes the eligible individuals are all members of the affected class alive when the bill becomes law. The renunciants whose citizenship were restored are to be included.

These individuals can be identified through the War Relocation Authority records in the National Archives. Further, JACL can help in locating these people by getting relevant information out to the Japanese American community through our organization's paper, PACIFIC CITIZEN, and through ethnic newspapers throughout the nation.

The JACL agrees with the order of payments. To assist the Governmental Affairs Committee with the information about the possible surviving population for 1987, I asked Richard T. Tani of Chicago, a Fellow of the Society of Actuaries, with 16 years experience to review the War Relocation Authority statistics for the 120,313 evacuated Americans of Japanese ancestry and resident aliens and project the number who are living in 1987. The figures are based on the white population of U.S. The Japanese are not identified as a separate group in actuary figures.

Not only the War Relocation Authority report, but those individuals who have completed research on Japanese Americans, are concluding that the incarceration may have affected the death rate upwards, particularly that of the older second generation population, those with citizenship, who carried the heavy family responsibilities during the incarceration, relocation and re-establishment of the families back into the communities.

The count for 1987 is close to 60,000. Some 1,200 are projected to die by the end of the year and the death figures will increase in the next few years since this group made up the largest number at evacuation - the 15 to 24 year old group.

The War Relocation Authority Report: The Evacuated People - A Quantitative Description in Section V., Age Composition of the Population wrote: (See figure 6 attachment)

> The evacuated people who entered WRA centers were made up of two distinct and unusual groups: (1) the aliens who came into the country as young people in the quarter century ending in 1924, a group that, in the last 20 years since immigration was stopped, had been diminishing in size and aging until their median age was 52 years; and (2) their

> American-born children (or second generation), including several thousand grandchildren (or third generation), who were born here during the last quarter century - a group that had few in the middle span of life and no aged and whose median age was 18-1/2 years.

The actuarial figures are broken down to five year increments based on the WRA population report, Table 37. For the phase-in plan, it will simply be a matter of computing the numbers to be paid each year, starting with the oldest first. The estimates on the survivors with the five year grouping is attached at the end of this statement. (Attachment #2)

* * *

We next look at Section 206, Civil Liberties Trust Fund. This section addresses the remedy for damages to the Japanese American communities and to the nation as a whole.

S. 1009 provides for the establishment of a Board of Directors to administer the Civil Liberties Public Education Fund, authorizing disbursements for:

(1) research and public educational activities relating to evacuation;

(2) comparative studies of similar civil liberties abuses as to the effect upon particular groups by racial prejudice in governmental action in times of national stress;

(3) preparation and distribution of findings to publishers, educators and libraries;

(4) general welfare of the ethnic Japanese American community in the United States, with due regard to the effects of exclusion and detention upon descendants of individuals who were evacuated, detained and relocated; and

(5) reasonable administrative expenses of the Board.

The evacuation, detention and relocation had a profound effect on the individuals who lost their freedom and devastated the Japanese American communities. To those who advocate that the breaking up of the communities and accepting that destruction was a positive step believe Japanese Americans to be different from other ethnic groups who make up the mosaic which adds to the greatness and beauty of America. Are the Irish asked to stop the celebration of St. Patrick's Day? We are a pluralistic nation and we derive our strength from that fact.

To lay to rest the self-hate and the denial of who we are, Japanese Americans must end the unproductive and self destructive behavior of believing that we must be 110% Americans.

Harry H. L. Kitano in his article "The Effects of Evacuation", page 154, of Japanese Americans - From Relocation to Redress wrote

> The most damaging consequence of living under inequality is the internalization of second-class citizenship and acceptance of the role descriptions of the dominant society. Individuals and groups believing in their own inferiority are apt to behave accordingly, even when the external environment changes.

I see Kitano's analysis as a study on whatever division we have within our own community and the inability of some of our own people to fight for what is rightfully theirs - to ask the government to pay for the damages they suffered - rather than to let others speak for us or to accept their historical analysis of what we experienced. The basic racism which these individuals continue to express shows the need for the educational programs.

Just as the individuals who suffered the degradation of false imprisonment cannot be made whole again, the Japanese American community of old cannot be recreated. This too, is a reality which must be accepted.

Nonetheless, the communities are part of the Japanese American identity and, like all the other ethnic communities throughout the United States, not only enrich the lives of the individuals who make up the communities, but do make a contribution to the United States in many ways. The communities and the cultural events and celebrations help us to remember that America is a nation of immigrants, and each group has contributed to the greatness of America.

The Civil Liberties Public Education Fund will help with the restoration, to a degree, of the communities through programs which will meet the needs of those individuals who returned to the West Coast or who established new communities elsewhere.

Programs to help the surviving Issei and the older Nisei, the individuals who had the most difficulty reestablishing themselves after the years of incarceration, should be on the priority list. Senior centers which have meal programs and recreational programs that specifically meet the needs of these people will help the elderly so they will not be spending their last years in isolation and coping with their changed status.

The second consideration besides the Japanese American communities is the significant contribution educational projects can make to inform the American citizenry of the Japanese American experience. There is need for further research about Japanese Americans and the impact of incarceration, the contributions made to this nation by the Japanese Americans, and the concept of a pluralistic society where the differences are valued as part of the individual's contribution. At all levels of our educational system, books and curriculum on Japanese Americans need to be added to emphatically bring to the consciousness of all Americans that we are a part of America. Such educational projects will help to prevent the repetition of the mistake which injured the Japanese Americans. Far too many Americans are ignorant of the events which transpired with Executive Order 9066 in 1942. The blackest chapter in our American history, when the Constitution was abrogated on the basis of race, must become part of our American education.

Therefore, JACL continues to support Section 206 as an appropriate remedy to restore the communities and to educate all Americans about the Japanese American experience. We believe, from our own experience, that truth and knowledge form the basis for informed decisions. The continuing hostility and opposition that we have heard in the past few years as we seek to redress our grievances through the passage of the bills exemplifies the lack of education about the Japanese Americans.

Congress clearly directed the Commission to inquire into the facts and circumstances of the relocation and detention because a fuller understanding of the facts would be valuable to both Congress and the American people. The remedies presented in Section 206 are consistent with the purpose of recommending appropriate remedies which acknowledge to some degree the wrongs inflicted during the war upon the ethnic Japanese.

* * *

Contemporaneous events document the responsibility we have to continue the public education activities about the Japanese American experience.

On October 1, the exhibit, entitled "A More Perfect Union: Japanese Americans and the U. S. Constitution", will open at the Smithsonian National Museum of American History and will run for five years. This exhibition marks the 200th anniversary of the Constitution, but even before there has been a viewing, it has stirred controversy and criticism. The prime purpose of the exhibit seems to be to raise the question of how in this nation with a Constitution which spells out in clear language the right to individual freedom, 120,000 Japanese Americans lost their freedom without the guaranteed due process.

Last month the former Senator S.I. Hayakawa (R-CA), former National Security Agency official, David D. Lowman, and former Chief of Army Intelligence in Hawaii, Edgar C. Doleman sent a copy of their "Dear Editor" letter to the 535 members of Congress and to the print, broadcast media, and wire services. Doleman and Lowman reside in Honolulu, Hawaii. Attached were photocopies of wartime photographs purportedly showing pro-Japan activities and a commentary by Lowman, entitled "Payoff is shameful sellout" that appeared in the May 12 edition of the San Diego Union. (Attachment #3.)

Since this "Dear Editor" letter was distributed to all the members of Congress, we cannot ignore the distortion of facts and the skewed statistical data. Those of us who suffered the pain and indignity of false accusations and removal from our homes 45 years ago are reading the same kind of untruths which anti-Asian organizations and the press such as the Hearst newspapers used against the Japanese Americans to stir up the war hysteria. This letter is a return to 1942. Perhaps, the letter should be cast aside, unworthy of further attention, but certain outlandish statements must be refuted. Our experience has been that misinformation continues about the incarceration, especially by those who oppose redress legislation.

My statements are from the document "The Evacuated People: A Quantitative Description." This report is from a series prepared by the U. S. War Relocation, initially under Director Milton Eisenhower and later Dillon S. Myer. I cite figures from this report since the opposition does not accept the report of the Commission on Wartime Relocation and Internment of Civilians.

The letter states "not 120,000" but 112,000 residents of Japanese ancestry were evacuated from the West Coast. The WRA report says 120,313 persons of Japanese descent came under the custody of the WRA, which adds 5,981 births in the camps, 1,118 Hawaiian Islanders, 219 voluntary and 1,275 institutions people, some of whom eventually went into the camps and those who remained institutionalized were under the WRA custody. The initial group that went into the assembly centers and Department of Justice internment camps and seasonal workers who went out to harvest crops from the WCCA assembly centers add up to 112,000 people, but the number who spent time in camps comes out to 120,000. (Attachment #4.)

Instead of "over 40% were enemy aliens," the correct percentage is less than 35%.

A more informed statistical analysis of the statement that camps "had the highest live-birth rate and lowest death rate in wartime U.S.A. . . (the average age of Americans of Japanese ancestry being 15.6 years) reads quite differently in the WRA report. I have fully discussed the make-up of the camp population earlier.

A comparison of the age-sex composition of the total U.S. on July 1, 1942 with the WRA center population as of Jan. 1, 1943 sharply defines the peculiar (emphasis mine) age distribution of the evacuated people.

By looking at the bulge in the 10 to 30 years group, which is much larger than the same age group in the general U.S. population, the birth rate would be higher. The families with little children were the last to leave, while the families with older children resettled first, an additional distortion. (Attachment #5.)

The WRA vital statistics report stated that "birth and death rates for a particular population are used primarily for comparison with similar rates for other population groups. However, comparing birth and death rates for WRA centers over a period of time is subject to many limitations because of the aforementioned peculiarities" (emphasis mine). (Attachment #6.)

The statement that "hundreds of residents of Japanese ancestry . . . unaffected by E.O. 9066 asked for and were granted permission to enter and reside in the camps for the duration of the war" is incorrect. 219 individuals came into the camps who were not under the order. They were soldiers who enlisted before the war but were subsequently discharged from the Army base and individuals who had left their families and settled in places outside the West Coast, but who could not find appropriate jobs or colleges and came to the camps to rejoin their families.

Another major distortion was the statement on military service and the number of volunteers from the camp evacuated people. Under these circumstances, I do not believe that any other group of people would initially jump at the opportunity to volunteer for the service. The 1,208 volunteers was the start. The WRA report states that between November 1940 and December 1945, some 25,778 Japanese Americans were inducted into the armed forces; 13,428 were from the mainland and 12,250 from Hawaii.

General Joseph Stilwell said of the Nisei soldiers:

> They bought an awful hunk of America with their blood . . . you're damn right those Nisei boys have a place in the American heart, now and forever. We cannot allow a single injustice to be done to the Nisei without defeating the purposes for which we fought.

Stilwell's response represents fairness and what this nation is all about rather than the distortions made by Hayakawa, Lowman and Doleman. (Attachment #7.)

We have different sources for statements attributed to Lt. Commander Kenneth D. Ringle of the Office of Naval Intelligence when he is quoted in this letter with the statement that "25 percent of all Americans of Japanese ancestry [are] of doubtful loyalty." In Justice at War, Peter Irons quotes from "Report on Japanese Question (Jan. 26, 1942, File ASW 14311, RG 107, NA) as follows:

> Ringle summarized his assessment of the loyalty of the Japanese American population in these words: "In short, the entire 'Japanese Problem' has been magnified out of its true proportion, largely because of the physical characteristics of the people [and] should be handled on the basis of the individual, regardless of citizenship, and not on a racial basis."
>
> Ringle specifically proposed, in both WRA memorandum and the Harpers article that followed this report, that residents of internment camps be accorded individual hearings "for the express purpose

> of deciding, on the basis of logic and reason and in view of the circumstances in each case, whether or not the individual is to be considered in the class of the potentially dangerous."

The most appropriate words and recognition came from President Truman when he gave the Presidential Unit Citation to the 100th/442nd Regimental Combat Team in 1946:

> You fought for the free nations of the world . . . you fought not only the enemy, you fought prejudice - and you won. Keep up that fight . . . continue to win - make this great republic stand for what the Constitution says it stands for: "the welfare of all the people, all the time."

How can Mr. Lowman think that "actions by the present administration and Congress regarding the evacuation of some 112,000 people of Japanese ancestry . . . have become a farce" in his article written for the Commentary column of the May 12 San Diego Union, titled "Payoff is shameful sell-out." His intelligence report of 1942 statements from the Federal Bureau of Investigation, The Army Intelligence and the Office of Naval Intelligence are the opposite of the information which came from the National Archives.

I think it is pitiful of Mr. Lowman to accuse the present government of "appeasing the powerful Japanese-American lobby." This particular remark is the biggest distortion of all. The Japanese American Citizens League-Legislative Education Committee in Washington, D.C. is a small operation. We cannot believe our opponents would make up such a story. (Attachment #8.)

The same assessment is made of the plaintiffs of U.S. v. Hohri. Lowman wrote "An even more remarkable distortion of facts is occurring in the case currently before the Supreme Court. Here, the Japanese-American lobby is seeking the right to sue the United States for more than $25 billion because of the evacuation." The U.S. Supreme Court, by an 8-0 decision referred the class action suit to the U.S. Court of Appeals in Washington, D.C. without rendering a decision on the overall merits of the case. The Hohri case remains active. JACL has joined in the amici curiae to support Hohri et al plaintiffs.

The small lobby has justice and the Constitution behind it and the base of fair-minded people who upon reviewing the facts are capable of making the decision to support the redress cause.

CONCLUSION

We believe this Senate will enact S.1009. I will paraphrase George Bernard Shaw: "You see things; and you say, 'Why right now?'" But I dream things and have hopes and aspirations for Japanese Americans and all Americans that never were and I say, "Why not now?"

The reality of time weighs more heavily. There are less than 60,000 survivors of the 120,000 who left their homes with such short notice after being publicly branded as potentially disloyal to their own country.

It is time for honesty in our nation that Japanese Americans were removed from their homes on the basis of "potential disloyalty" to their own country. It is time to recognize that Japanese Americans are Americans, too. It is time to make real the promise of liberty and justice for all.

From the CWRIC report developed from the testimonies of 750 witnesses at the 20 hearings and the research completed from records, from numerous researched books on Japanese Americans and from the hearings held by the Senate and House subcommittee since the redress legislation was first introduced, we can conclude today there is acceptance in American that the incarceration of 120,000 Americans of Japanese ancestry and resident aliens was not justified and that appropriate remedies should be made by Congress in recognition of the damages for the loss of personal freedom.

I have attempted to answer many questions raised by Senators on this bill to redress the Japanese Americans, particularly on the individual payments. The passage of S.1009 with the payment of $20,000 to each survivor of Executive Order 9066 will not set a precedent for compensation, since the payment is to be made only to the direct victims of the order and subsequent Acts which came from the initial order. This method of payment is the only workable plan after 45 years, rather than to set up an adjudicatory claims procedure which will take more years. In the meantime, the surviving victims who suffered the most and who never recouped after their isolation from the mainstream of American life. These people spent from one to four years as prisoners in their own country; make no mistake that this dislocation and removal of the whole West Coast population of Japanese Americans can be described in any other manner.

This nation is celebrating the Bicentennial of the United States Constitution. Besides correcting the travesty committed against loyal citizens, the passage of S.1009 will be timely and will show the rest of the world that America admits its mistake and makes amends to those who were damaged by its decisions and actions. How else will other nations understand what we say about human rights and individual freedom?

William B. Reynolds, Assistant Attorney General, Civil Rights Division, in his speech to the Federalist Society in January, 1987 said:

> All of us in government -- officials of the Executive branch, Congressmen, judges -- have taken an oath to uphold the Constitution. In taking this oath, we do more than merely promise to avoid committing federal crimes. We promise to take our responsibilities under the Constitution seriously. This will sometimes mean making unpopular decisions, taking political heat, (and heat from the press too), and accepting accountability. Yet too often, decisions with profound consequences for our constitutional government are made with no reference or thought given to the constitutional implications; those more profound considerations are all but forgotten in the rush to respond (invariably politically) to immediate political exigencies.

It is through our conduct, the choices we make, the objectives we set, that we decide our nation's course and pass on this liberty to future generations.

Time inexorably marches on beyond. In behalf of the less than 60,000 survivors of E.O. 9066, the Japanese American Citizens League and Legislative Education Committee turn to Congress and ask the Senate to support the passage of S. 1009 during this 100th Congress in response to the petition for redress of our grievances.

The ancient Greek scholar asked, "When will justice come? When those who are not injured are as indignant as those who are." Our hope is that the Senators will agree that S. 1009 is responsible legislation and good for our nation.

I am available to respond to any concerns raised by the members of the Governmental Affairs Committee.

Thank you, Mr. Chairman and members of the subcommittee for this wonderful opportunity to testify today.

Respectfully submitted,

Grayce Uyehara

Grayce Uyehara
Executive Director
JACL-Legislative Education Comb.

BIOGRAPHICAL SKETCH

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Birth: July 4, 1919, Stockton, California

Married: Hiroshi Uyehara

Family: 4 children and 3 grandchildren

Education:
- Stockton High School - 1937
- College of the Pacific, Stocton, CA, B of Music, 1942 (in absentia), Mu Phi Epsilon
- University of Pennsylvania, Graduate School of Social Work Philadelphia, MSW, 1947
- Cheyney University, Cheyney, PA - Graduate Education Certification 1978

Work Experience:
28 years in Group and Community, Child Welfare, Clinical Work and Education of Exceptional Students

I was 21 years old and was in my senior year in college when our family of nine was sent to the Stockton Assembly Center in May of 1942 and subsequently, to the Rohwer Relocation Center in Arkansas.

During my senior year, I was recruited by the Army through the College of the Pacific to teach the Japanese language to the servicemen stationed at the Stockton Quartermaster Base and was to also instruct the officers attached to the Army Air Force station in Stockton, but was evacuated before I took on this assignment.

Two of my brothers served with the 442nd Infantry Battalion in Italy.

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STATEMENT OF JERRY ENOMOTO
CHAIRMAN OF THE LEGISLATIVE EDUCATION COMMITTEE
OF THE JAPANESE AMERICAN CITIZENS LEAGUE
IN SUPPORT OF S. 1009

TO THE

SUBCOMMITTEE ON FEDERAL SERVICE, POST OFFICE,
AND CIVIL SERVICE

UNITED STATES SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS

JUNE 17, 1987

Mr. Chairman and Members of the Subcommittee:

As National Chairman of the Legislative Education Committee of the Japanese American Citizens League, I write this letter in support of S. 1009, a bill to accept the findings and to implement the recommendations of the Commission on

Wartime Relocation and Internment of Civilians, and to thank you for holding these hearings early in the 100th Congress. I ask to have this written statement entered in the hearing record.

Americans of Japanese ancestry have sometimes been disappointed by events over the years which have tested our faith in the concepts of equality and justice that are our birthright as Americans.

I feel it is symbolic that this hearing on S. 1009, the bill to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians, takes place in the year in which we celebrate the Bicentennial of the Constitution of the United States. Those who have worked hard and long to advance the case of redress are hopeful that this hearing represents the first step toward successful passage of a meaningful redress bill.

We believe that the celebration of the Bicentennial of the Constitution will be enhanced by remedial action bringing a measure of justice to those Americans incarcerated without charges or findings of guilt in 1942. Certainly a major blot on America's constitutional history will be erased if this effort is successful.

Those who endorse S. 1009 and its companion House bill do so not only to uphold the ideals of personal justice and fairness, but because it provides some symbolic measure of indemnification.

I am encouraged by the words of California Senator Pete Wilson who said, "I think this [redress] is something we can afford and, more to the point, something we are obliged to afford." He added that, "This is a bill for all Americans".

It is our hope that all fair-minded Americans will share Senator Wilson's belief and that there will be appropriate remedies made to the survivors of Executive Order 9066.

By Congress acknowledging and correcting the injustices of the past, all Americans and the world are assured that the basic human rights of individuals are protected in the United States.

We, therefore, strongly urge passage of S. 1009.

Respectfully submitted,

Jerry Enomoto
JACL-LEC Chairman

Attachment #1

CIVILIAN EXCLUSION ORDER #34

INSTRUCTIONS TO ALL PERSONS OF JAPANESE ANCESTRY

THE FOLLOWING INSTRUCTIONS MUST BE OBSERVED:

#2. Evacuees must carry with them on departure for the Assembly Center, the following property:

(a) Bedding and linens (no mattress) for each member of the family;

(b) Toilet articles for each member of the family;

(c) Extra clothing for each member of the family;

(d) Sufficient knives, forks, spoons, plates, bowls and cups for each member of the family;

(e) Essential personal effects for each member of the family.

The above excerpt of order was for "All persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above designated area..."

Attachment #2
(4 pages)

ESTIMATE OF WRA CENTER POPULATION WHO ARE STILL LIVING

	Age (1943)	Age (1987)	Number in 1943	Probability Still Alive*	Expected Number in 1987	Expected Deaths in One More Year
MALES	0-4	44-48	4,225	.90958	3,843	16
	5-9	49-53	3,614	.89509	3,235	22
	10-14	54-58	4,813	.84825	4,083	45
	15-19	59-63	7,815	.77766	6,077	105
	20-24	64-68	7,742	.67816	5,250	141
	25-29	69-73	4,869	.54941	2,675	109
	30-34	74-78	2,608	.40183	1,048	63
	35-39	79-83	2,761	.25558	706	63
	40-44	84-88	3,273	.13395	438	52
	45-49	89-93	2,051	.05486	113	19
	50-54	94-98	3,524	.01693	60	14
	55-59	99-103	4,939	.00367	18	5
	Subtotal		52,234		27,546	658
FEMALES	0-4	44-48	3,885	.94715	3,680	8
	5-9	49-53	3,547	.94212	3,342	12
	10-14	54-58	4,724	.91502	4,323	24
	15-19	59-63	7,669	.87433	6,705	59
	20-24	64-68	7,914	.81704	6,466	86
	25-29	69-73	4,773	.73756	3,520	73
	30-34	74-78	2,158	.62724	1,354	45
	35-39	79-83	2,213	.47717	1,056	58
	40-44	84-88	3,491	.30295	1,058	93
	45-49	89-93	3,838	.14859	570	77
	50-54	94-98	2,725	.05134	139	29
	55-59	99-103	1,520	.01095	17	6
	Subtotal		48,457		32,230	570
TOTAL			100,691		59,776	1,228

*See Attached

TABLE 37.—AGE BY SEX AND NATIVITY: All WRA Centers, January 1, 1943 (Number and Percent)

Note: Refers to resident population of centers including evacuees on short-term and seasonal leave. By January 1, 1943, transfer of evacuees to WRA Centers was complete except for (1) 930 Hawaiian evacuees, 814 American Born and 116 Foreign Born, who entered in February and March of 1943, and (2) miscellaneous admissions from 1943 to 1945 of aliens paroled or released from Department of Justice Internment Camps, a small number of voluntary evacuees, persons from institutions, etc. By this date 866 evacuees, 816 American Born and 50 Foreign Born, had relocated from centers on indefinite leave.

AGE	NUMBER									PERCENT								
	TOTAL			AMERICAN BORN			FOREIGN BORN			TOTAL			AMERICAN BORN			FOREIGN BORN		
	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
TOTAL	110,240	60,189	50,051	71,531	36,635	34,896	38,709	23,554	15,155	100.0	54.6	45.4	64.9	33.2	31.7	35.1	21.4	13.7
Under 5	8,110	4,225	3,885	8,081	4,208	3,873	29	17	12	7.3	3.8	3.5	7.3	3.8	3.5	*	*	*
5-9	7,161	3,614	3,547	7,105	3,590	3,515	56	24	32	6.5	3.3	3.2	6.5	3.3	3.2	*	*	*
10-14	9,537	4,813	4,724	9,465	4,779	4,686	72	34	38	8.6	4.3	4.3	8.6	4.3	4.3	*	*	*
15-19	15,484	7,815	7,669	15,357	7,749	7,608	127	66	61	14.1	7.1	7.0	13.9	7.0	6.9	.2	.1	.1
20-24	15,656	7,742	7,914	15,401	7,622	7,779	255	120	135	14.2	7.0	7.2	14.0	6.9	7.1	.2	.1	.1
25-29	9,642	4,869	4,773	9,371	4,720	4,651	271	149	122	8.7	4.4	4.3	8.5	4.3	4.2	.2	.1	.1
30-34	4,766	2,608	2,158	4,191	2,296	1,895	575	312	263	4.3	2.4	1.9	3.8	2.1	1.7	.5	.3	.2
35-39	4,974	2,761	2,213	1,677	1,078	599	3,297	1,683	1,614	4.5	2.5	2.0	1.5	1.0	.5	3.0	1.5	1.5
40-44	6,764	3,273	3,491	587	409	178	6,177	2,864	3,313	6.2	3.0	3.2	.6	.4	.2	5.6	2.6	3.0
45-49	5,889	2,051	3,838	196	121	75	5,693	1,930	3,763	5.4	1.9	3.5	.2	.1	.1	5.2	1.8	3.4
50-54	6,249	3,524	2,725	69	48	21	6,180	3,476	2,704	5.7	3.2	2.5	*	*	*	5.7	3.2	2.5
55-59	6,459	4,939	1,520	13	7	6	6,446	4,932	1,514	5.9	4.5	1.4	*	*	*	5.9	4.5	1.4
60-64	5,367	4,416	951	5	4	1	5,362	4,412	950	4.9	4.0	.9	*	*	*	4.9	4.0	.9
65-69	2,888	2,433	455	2	1	1	2,886	2,432	454	2.6	2.2	.4	*	*	*	2.6	2.2	.4
70-74	944	814	130	5	2	3	939	812	127	.8	.7	.1	*	*	*	.8	.7	.1
75 & over	350	292	58	6	1	5	344	291	53	.3	.3	*	*	*	*	.3	.3	*

* Less than 0.05 percent.

Source: Form WRA-26

The Evacuated People - A Quantitative Description, pg. 100
U.S. Dept. of Interior - War Relocation Authority, 1946

ESTIMATE OF WRA CENTER POPULATION
WHO ARE STILL LIVING

In order to estimate the number of persons who were in the WRA Centers and are still alive, the following calculations were made.

1. The 1943 census, by sex and five year age groupings was obtained from Form WRA-26/p. 100 (An Evacuated People A Quantitative Description).

2. The probability that a person in 1943 is alive in 1987 was derived primarily from mortality information prepared by the U.S. Department of Health and Human Services (U.S. Life Tables).

   U.S. Life Tables are prepared every 10 years based on census information and reflect the mortality during the period of the census, e.g., 1939-1941, 1949-1951, etc. Using these tables, the probability of living from 1943 to 1987 was obtained for persons 0, 5, 10, 15, etc. The probability was based on the assumptions that the mortality for the following periods was based on the following mortality tables:

   1943-1948 : 1939-1941 U.S. Life Table
   1948-1958 : 1949-1951 U.S. Life Table
   1958-1968 : 1959-1961 U.S. Life Table
   1968-1978 : 1969-1971 U.S. Life Table
   1978-1987 : 1979-1981 U.S. Life Table.

   The probability of living for each age group was obtained by averaging the probability of living for the endpoints of the age group. For example, for the 5-9 age group, the probability was the average for a 5 year old and a 10 year old.

3. The mortality used was "white males" for males and "white females" for females. There are no readily available statistics to indicate that mortality for this group should be significantly different from these.

   For the 0 age group, half of the deaths between age 0 and age 1 were deleted since they occur in the first few days after birth and these deaths are probably already reflected in the original census figures. This assumption increased the number of still living persons in the original 0-4 age group by 80 (46 males and 34 females). It has no impact on any other age group.

   The U.S. Life Tables only reflect mortality up to age 85. For ages over 85, we used the 1971 Group Annuity Mortality Table (separate male and female rates). Since this table is used for annuity calculations, it generally understates deaths. For those age groups affected (over age 85 in 1987), the error in the total number of persons still living is probably less than 10%.

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Richard Tani is a principal with Mercer-Meidinger-Hansen and has been a consulting actuary in employee benefits for 15 years. Prior to his actuarial work, he was an Assistant Professor of Mathematics at Beloit College for 4 years.

He has a BA in Mathematics from Oberlin College (1964) and has three years of graduate work towards a Ph.d at Wesleyan University. He is a Fellow of the Society of Actuaries, a Member of the American Academy of Actuaries, and an Enrolled Actuary.

ATTACHMENT #3 - 5 pages

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FOR IMMEDIATE RELEASE

MAY 1987

Dear Editor:

DID YOU KNOW:

That of the 112,000 (not 120,000) residents of Japanese ancestry (RJA's) evacuated from our West Coast -- along with ALL NON-Japanese enemy aliens -- over 40% were enemy aliens;

That the U.S. Supreme Court ruled the exclusion constitutional in light of precedents that the national peril takes precedence over civil rights and stated that entering a relocation center was not mandatory;

That when FDR signed E.O. 9066, Feb. 19. 1942, he had overwhelming information from both U.S. and Imperial Japan sources that large numbers of RJA's had been organized into nets for spying and sabotage for Japan;

That Commander Ringle, called *"the most capable intelligence officer we had"* by the Commission on Wartime Relocation and Internment of Civilians (CWRIC), considered 25% of all Americans of Japanese ancestry (AJA's) of doubtful loyalty, and said that 3,500 RJA's could be expected to engage in espionage and sabotage, and that Senator Inouye subsequently acknowledged the danger of Japan's invasion of our West Coast. He said but for the breaking of Japan's secret codes, *"the Pacific conflict might have been waged on the coast of California"*. Foreword by Daniel K. Inouye, U.S. Senator from Hawaii, "Double-Edged Secrets: U.S. Naval Intelligence Operations in the Pacific during World War II", W. J. Holmes, (1979);

That the Japanese American Citizens League (JACL) gave two post-war testimonial dinners to honor Dillon S. Myer, Director of the War Relocation Authority, and Mrs. Roosevelt said the WRA's work was *"one of the achievements of government administration of which every American can be proud"*. Foreword by Eleanor Roosevelt, "Beauty Behind Barbed Wire: The Arts of the Japanese in Our War Relocation Camps", Allen H. Eaton, (1952);

That the WRA centers had the highest live-birth rate and the lowest death rate in wartime U.S.A., and each WRA center had the facilities of a small town and enjoyed capped and gowned graduations, bands, and uniformed sports teams,(the average age of AJA's being 15.6 years);

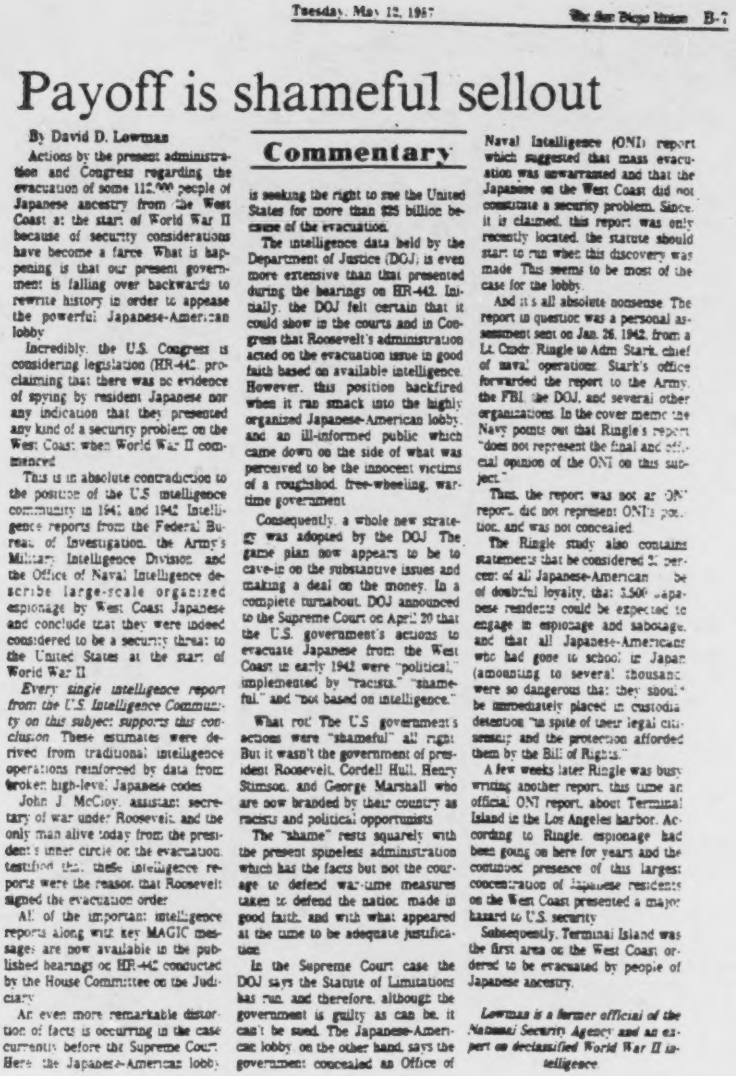
That hundreds of RJA's residing in States unaffected by E.O. 9066, asked for and were granted permission to enter and reside in the centers for the duration of the war;

That 35.000 RJA's left the centers for new jobs and homes, and 4,000 AJA's left to attend college or university, including Wm. M. Marutani, now a Judge and member of the CWRIC;

That of the estimated 10,000 AJA's residing in the WRA centers and who were eligible for military service during World War II, only 1,208 volunteered;

That the only "atrocities" in the WRA centers were committed by those loyal to the Emperor, against residents who were pro-American;

That if any bill passes to "implement the findings and recommendations of the CWRIC", we taxpayers would have to apologize and pay $20,000 to each "survivor" including those still living of:
- a) the 6,000 children born in the relocation centers;
- b) thousands of enemy aliens who could have been legally interned under both U.S. and international law and had their properties confiscated;
- c) the 5,000 RJA's in the WRA centers who renounced U.S. citizenship;
- d) 4,724 RJA's who went from the WRA.centers to Japan -- some to join Japan's military forces and fight against the United States.



Tuesday, May 12, 1987 The San Diego Union B-7

Payoff is shameful sellout

Commentary

By David D. Lowman

Actions by the present administration and Congress regarding the evacuation of some 112,000 people of Japanese ancestry from the West Coast at the start of World War II because of security considerations have become a farce. What is happening is that our present government is falling over backwards to rewrite history in order to appease the powerful Japanese-American lobby.

Incredibly, the U.S. Congress is considering legislation (HR-442) proclaiming that there was no evidence of spying by resident Japanese nor any indication that they presented any kind of a security problem on the West Coast when World War II commenced.

This is in absolute contradiction to the position of the U.S. intelligence community in 1941 and 1942. Intelligence reports from the Federal Bureau of Investigation, the Army's Military Intelligence Division and the Office of Naval Intelligence describe large-scale organized espionage by West Coast Japanese and conclude that they were indeed considered to be a security threat to the United States at the start of World War II.

Every single intelligence report from the U.S. Intelligence Community on this subject supports this conclusion. These estimates were derived from traditional intelligence operations reinforced by data from broken high-level Japanese codes.

John J. McCloy, assistant secretary of war under Roosevelt and the only man alive today from the president's inner circle on the evacuation, testified that these intelligence reports were the reason that Roosevelt signed the evacuation order.

All of the important intelligence reports along with key MAGIC messages are now available in the published hearings on HR-442 conducted by the House Committee on the Judiciary.

An even more remarkable distortion of facts is occurring in the case currently before the Supreme Court. Here the Japanese-American lobby is seeking the right to sue the United States for more than $25 billion because of the evacuation.

The intelligence data held by the Department of Justice (DOJ) is even more extensive than that presented during the hearings on HR-442. Initially, the DOJ felt certain that it could show in the courts and in Congress that Roosevelt's administration acted on the evacuation issue in good faith based on available intelligence. However, this position backfired when it ran smack into the highly organized Japanese-American lobby, and an ill-informed public which came down on the side of what was perceived to be the innocent victims of a roughshod, free-wheeling, wartime government.

Consequently, a whole new strategy was adopted by the DOJ. The game plan now appears to be to cave-in on the substantive issues and making a deal on the money. In a complete turnabout, DOJ announced to the Supreme Court on April 20 that the U.S. government's actions to evacuate Japanese from the West Coast in early 1942 were "political," implemented by "racists," "shameful," and "not based on intelligence."

What rot! The U.S. government's actions were "shameful" all right. But it wasn't the government of president Roosevelt, Cordell Hull, Henry Stimson, and George Marshall who are now branded by their country as racists and political opportunists.

The "shame" rests squarely with the present spineless administration which has the facts but not the courage to defend war-time measures taken to defend the nation made in good faith, and with what appeared at the time to be adequate justification.

In the Supreme Court case the DOJ says the Statute of Limitations has run, and therefore, although the government is guilty as can be, it can't be sued. The Japanese-American lobby, on the other hand, says the government concealed an Office of Naval Intelligence (ONI) report which suggested that mass evacuation was unwarranted and that the Japanese on the West Coast did not constitute a security problem. Since, it is claimed, this report was only recently located, the statute should start to run when this discovery was made. This seems to be most of the case for the lobby.

And it's all absolute nonsense. The report in question was a personal assessment sent on Jan. 26, 1942, from a Lt. Cmdr. Ringle to Adm. Stark, chief of naval operations. Stark's office forwarded the report to the Army, the FBI, the DOJ, and several other organizations. In the cover memo the Navy points out that Ringle's report "does not represent the final and official opinion of the ONI on this subject."

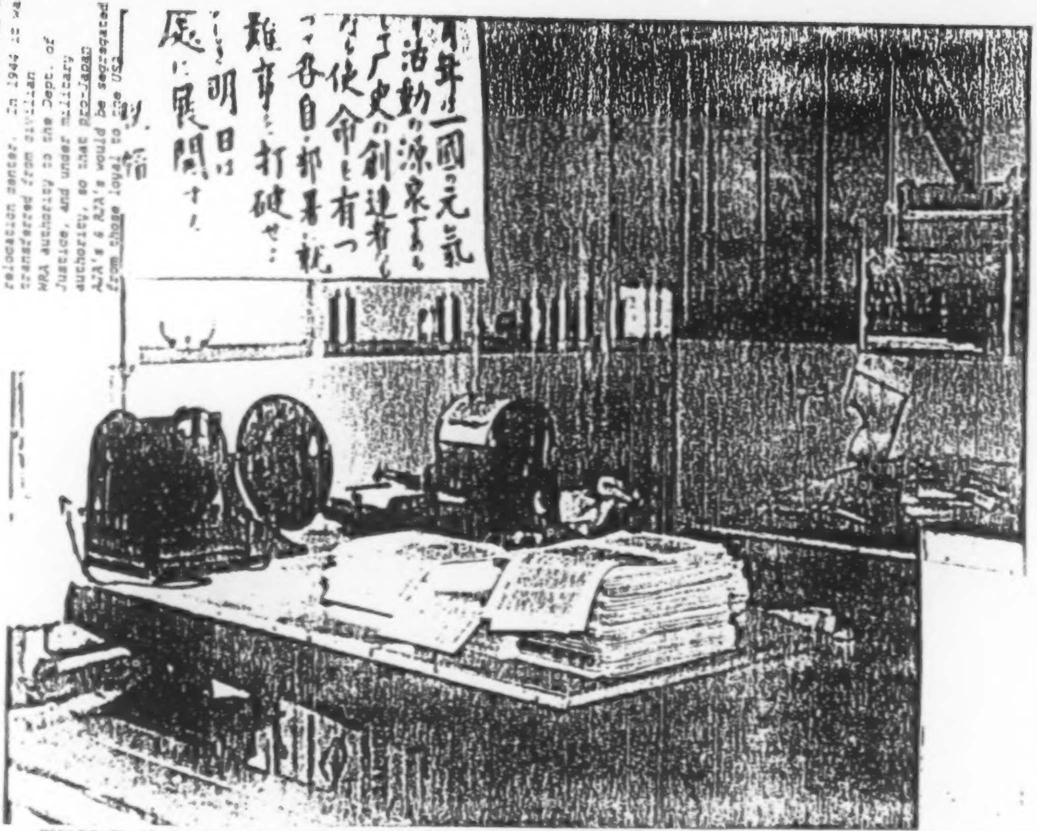
Thus, the report was not an ONI report, did not represent ONI's position, and was not concealed.

The Ringle study also contains statements that he considered [illegible] percent of all Japanese-American be of doubtful loyalty, that 3,500 Japanese residents could be expected to engage in espionage and sabotage, and that all Japanese-Americans who had gone to school in Japan (amounting to several thousand) were so dangerous that they should be immediately placed in custodial detention "in spite of their legal citizenship and the protection afforded them by the Bill of Rights."

A few weeks later Ringle was busy writing another report, this time an official ONI report, about Terminal Island in the Los Angeles harbor. According to Ringle, espionage had been going on here for years and the continued presence of this largest concentration of Japanese residents on the West Coast presented a major hazard to U.S. security.

Subsequently, Terminal Island was the first area on the West Coast ordered to be evacuated by people of Japanese ancestry.

Lowman is a former official of the National Security Agency and an expert on declassified World War II intelligence.

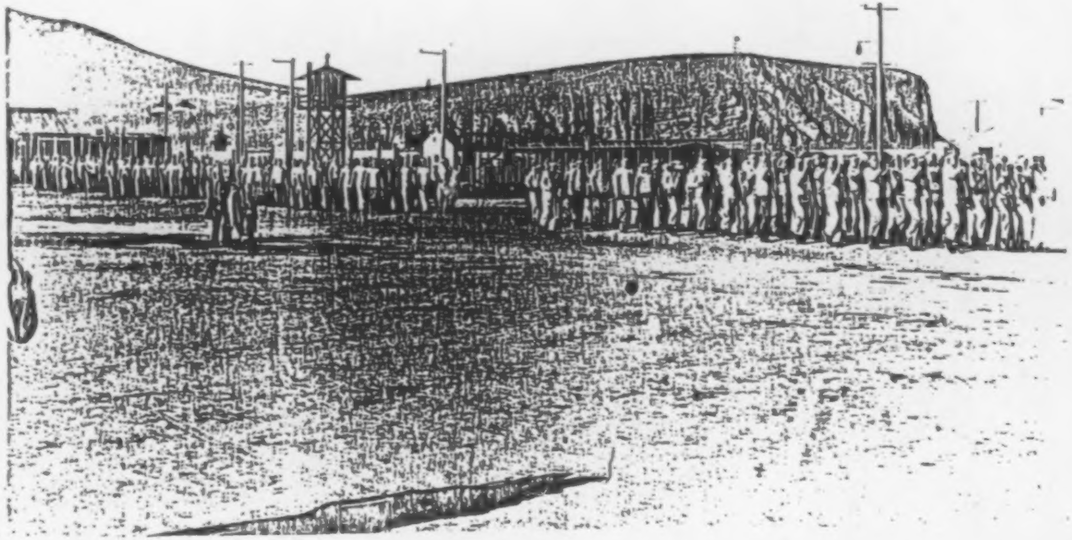


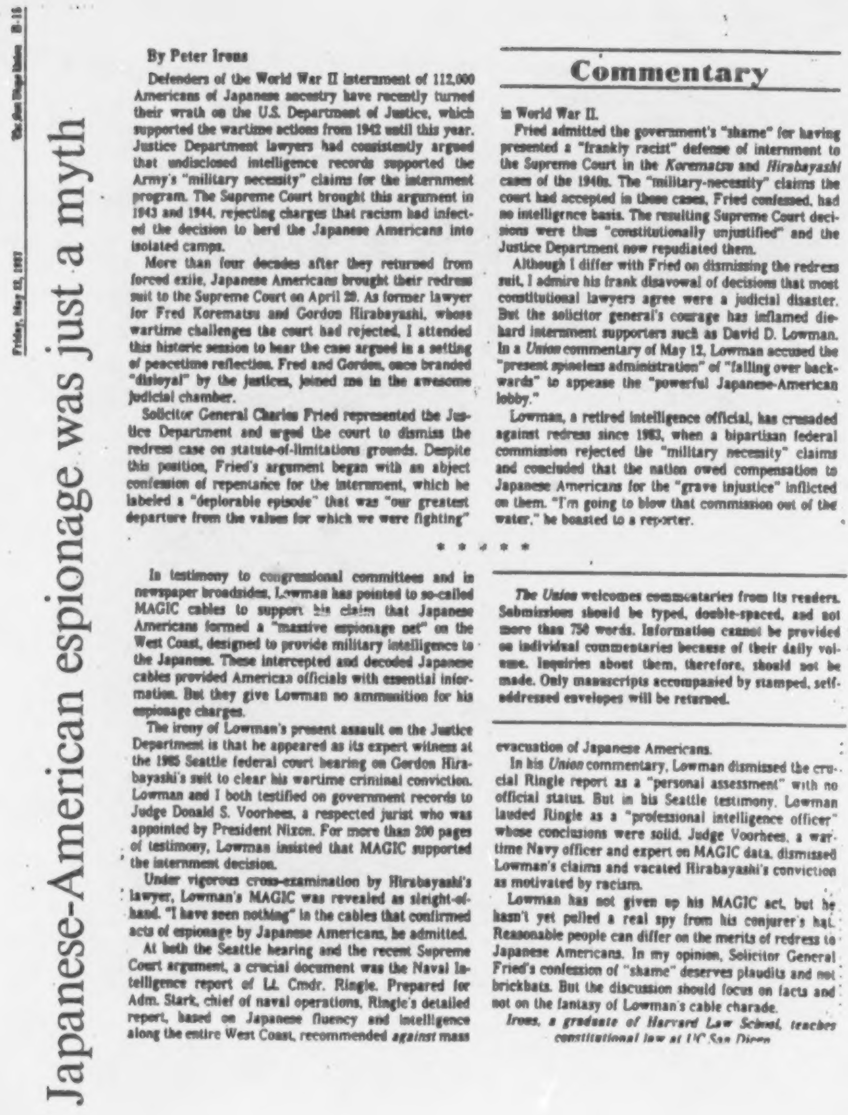
There was no "barred wire" or "watchtowers" when Tule Lake was a relocation center. In 1944 it was transferred from civilian WRA authority to the Dept. of Justice, and under military authority, so that pro-Japan AJA's & RJA's would be segregated from those loyal to the USA

PHOTO #I. National Archives FBI Raid at Tule Lake Segregation Center, uncovers covert action taken by pro-Japan "patriotic organizations", to subvert pro-American activities. PRO-JAPAN literature being printed.

PHOTO #2 . National Archives *Tule Lake WRA center became a segregation center in 1944 for pro-Japan Americans*

HOKOKU SEINEN DAN. a pro-Japan patriotic organization at Tule Lake Segregation Center, march in "goose-step" fashion, Fascist style. They wear Japanese military haircuts, with head-bands, and pro-Japan patriotic symbols on shirts. They "practice, Japan military style", for wnen they supposedly can join Japan's forces in final victory against the United States. HOKOKU SEINEN DAN was one of several subversive organizations operating on the West Coast and at the Tule Lake Segregation Center. Most of its members were transferred from the war relocation centers in other parts of the United States, because they were "troublemakers", causing anti-American riots. Many had requested expatriation or repatriation to Japan. Some members were arrested after mass demontrations. Including Japanese-Americans who had renounced their American citizenship--thus becoming Japanese enemy aliens. They could therefore be transferred under the Dept. of Justice for internment. No American citizen could be "interned", because internment is for alien enemies only. This is photographic evidence of thousands of cases of disloyality by AMERICANS of Japanese descent. To attempt to subvert loyal Americans is an act of sabotage, and many loyal Americans who were pro-American, were beaten and threatened by the pro-Japan memoers of HOKOKU SEINEN DAN.





Friday, May 22, 1987 The San Diego Union B-15

Japanese-American espionage was just a myth

Commentary

By Peter Irons

Defenders of the World War II internment of 112,000 Americans of Japanese ancestry have recently turned their wrath on the U.S. Department of Justice, which supported the wartime actions from 1942 until this year. Justice Department lawyers had consistently argued that undisclosed intelligence records supported the Army's "military necessity" claims for the internment program. The Supreme Court brought this argument in 1943 and 1944, rejecting charges that racism had infected the decision to herd the Japanese Americans into isolated camps.

More than four decades after they returned from forced exile, Japanese Americans brought their redress suit to the Supreme Court on April 20. As former lawyer for Fred Korematsu and Gordon Hirabayashi, whose wartime challenges the court had rejected, I attended this historic session to hear the case argued in a setting of peacetime reflection. Fred and Gordon, once branded "disloyal" by the justices, joined me in the awesome judicial chamber.

Solicitor General Charles Fried represented the Justice Department and urged the court to dismiss the redress case on statute-of-limitations grounds. Despite this position, Fried's argument began with an abject confession of repentance for the internment, which he labeled a "deplorable episode" that was "our greatest departure from the values for which we were fighting" in World War II.

Fried admitted the government's "shame" for having presented a "frankly racist" defense of internment to the Supreme Court in the *Korematsu* and *Hirabayashi* cases of the 1940s. The "military-necessity" claims the court had accepted in these cases, Fried confessed, had no intelligence basis. The resulting Supreme Court decisions were thus "constitutionally unjustified" and the Justice Department now repudiated them.

Although I differ with Fried on dismissing the redress suit, I admire his frank disavowal of decisions that most constitutional lawyers agree were a judicial disaster. But the solicitor general's courage has inflamed die-hard internment supporters such as David D. Lowman. In a *Union* commentary of May 12, Lowman accused the "present spineless administration" of "falling over backwards" to appease the "powerful Japanese-American lobby."

Lowman, a retired intelligence official, has crusaded against redress since 1983, when a bipartisan federal commission rejected the "military necessity" claims and concluded that the nation owed compensation to Japanese Americans for the "grave injustice" inflicted on them. "I'm going to blow that commission out of the water," he boasted to a reporter.

* * * * *

In testimony to congressional committees and in newspaper broadsides, Lowman has pointed to so-called MAGIC cables to support his claim that Japanese Americans formed a "massive espionage net" on the West Coast, designed to provide military intelligence to the Japanese. These intercepted and decoded Japanese cables provided American officials with essential information. But they give Lowman no ammunition for his espionage charges.

The irony of Lowman's present assault on the Justice Department is that he appeared as its expert witness at the 1985 Seattle federal court hearing on Gordon Hirabayashi's suit to clear his wartime criminal conviction. Lowman and I both testified on government records to Judge Donald S. Voorhees, a respected jurist who was appointed by President Nixon. For more than 200 pages of testimony, Lowman insisted that MAGIC supported the internment decision.

Under vigorous cross-examination by Hirabayashi's lawyer, Lowman's MAGIC was revealed as sleight-of-hand. "I have seen nothing" in the cables that confirmed acts of espionage by Japanese Americans, he admitted.

At both the Seattle hearing and the recent Supreme Court argument, a crucial document was the Naval Intelligence report of Lt. Cmdr. Ringle. Prepared for Adm. Stark, chief of naval operations, Ringle's detailed report, based on Japanese fluency and intelligence along the entire West Coast, recommended *against* mass evacuation of Japanese Americans.

In his *Union* commentary, Lowman dismissed the crucial Ringle report as a "personal assessment" with no official status. But in his Seattle testimony, Lowman lauded Ringle as a "professional intelligence officer" whose conclusions were solid. Judge Voorhees, a wartime Navy officer and expert on MAGIC data, dismissed Lowman's claims and vacated Hirabayashi's conviction as motivated by racism.

Lowman has not given up his MAGIC act, but he hasn't yet pulled a real spy from his conjurer's hat. Reasonable people can differ on the merits of redress to Japanese Americans. In my opinion, Solicitor General Fried's confession of "shame" deserves plaudits and not brickbats. But the discussion should focus on facts and not on the fantasy of Lowman's cable charade.

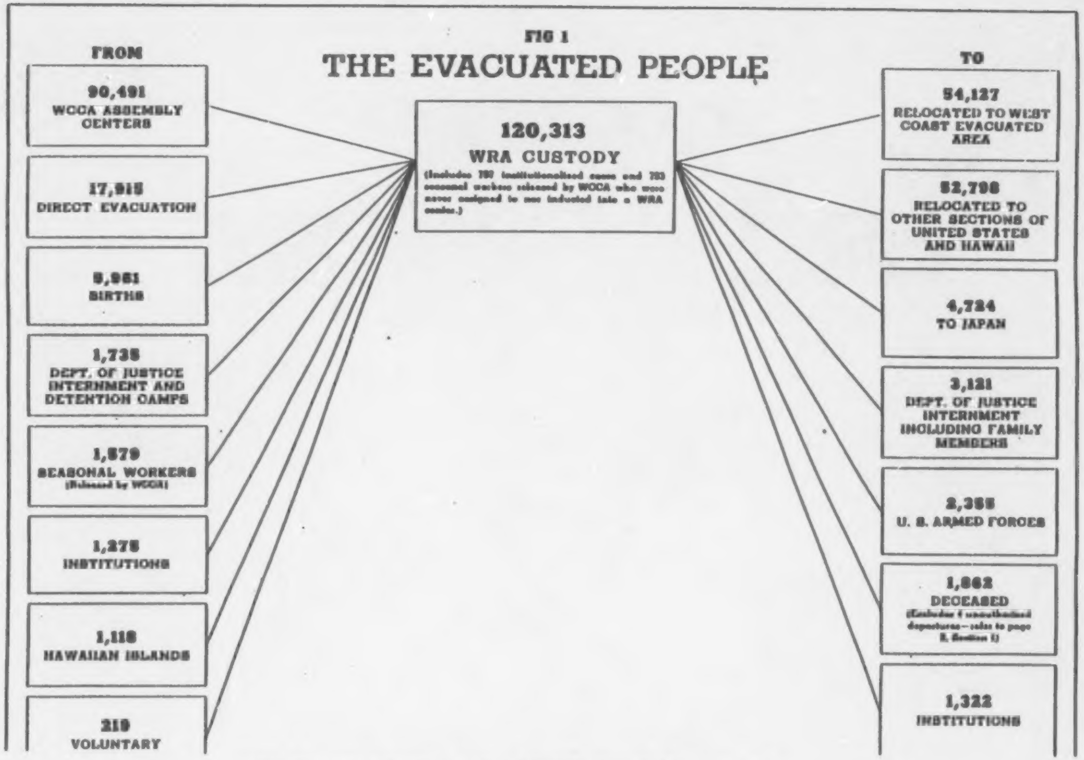
Irons, a graduate of Harvard Law School, teaches constitutional law at UC San Diego.

The Union welcomes commentaries from its readers. Submissions should be typed, double-spaced, and not more than 750 words. Information cannot be provided on individual commentaries because of their daily volume. Inquiries about them, therefore, should not be made. Only manuscripts accompanied by stamped, self-addressed envelopes will be returned.

Attachment 4

FIG 1

THE EVACUATED PEOPLE

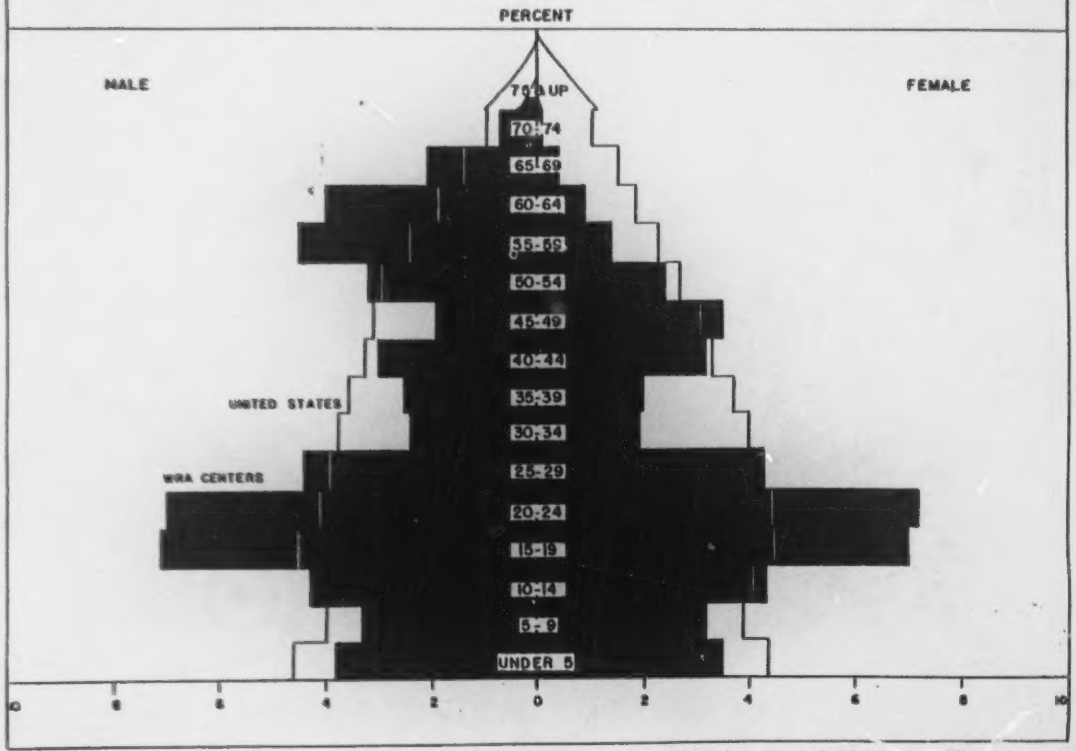

FROM
90,491 WCCA ASSEMBLY CENTERS
17,915 DIRECT EVACUATION
5,981 BIRTHS
1,735 DEPT. OF JUSTICE INTERNMENT AND DETENTION CAMPS
1,579 SEASONAL WORKERS (Released by WCCA)
1,275 INSTITUTIONS
1,118 HAWAIIAN ISLANDS
219 VOLUNTARY
120,313 WRA CUSTODY
TO
54,127 RELOCATED TO WEST COAST EVACUATED AREA
52,798 RELOCATED TO OTHER SECTIONS OF UNITED STATES AND HAWAII
4,724 TO JAPAN
3,121 DEPT. OF JUSTICE INTERNMENT INCLUDING FAMILY MEMBERS
2,355 U. S. ARMED FORCES
1,862 DECEASED
1,322 INSTITUTIONS

The Evacuated People - A Quantitative Description, pg. 8
U.S. Dept. of Interior - War Relocation Authority, 1946

Attachment #5

FIG. 6

AGE - SEX COMPOSITION: UNITED STATES POPULATION 7-1-42 AND WRA CENTER POPULATION 12-31-42



SOURCE: TABLES 35 & 37

The Evacuated People - A Quantitative Description, pg. 92
U.S. Dept. of Interior - War Relocation Authority, 1946

Attachment #6
(2 pages)

TABLE 4.—POPULATION ACCOUNTABILITY BY SPECIFIC TYPE OF FINAL DEPARTURE AND LEAVE STATUS (INCLUDING TRANSFER TO CENTER), BY CENTER:
WRA Centers from Inception to Closing

Note: Accounts for all evacuees who were ever inducted into or assigned to a WRA center from inception to closing, including transfers to other centers, and accounts for all other persons under general custody of WRA.

TYPE OF FINAL DEPARTURE AND LEAVE STATUS	TOTAL	CENTRAL UTAH	COLORADO RIVER	GILA RIVER	GRANADA	HEART MOUNTAIN	JEROME	MANZANAR	MINIDOKA	ROHWER	TULE LAKE
TOTAL CUSTODY (WRA Center & Other)											
Including Transfer To Center	1/	11,212	19,534	16,655	10,256	14,025	10,241	11,062	13,078	11,928	29,490
Excluding Transfer To Center	2/120,313	9,577	17,707	14,421	9,887	12,737	2,096	8,233	12,676	10,337	21,846
WRA CENTER CUSTODY											
Including Transfer To Center	1/	11,212	19,534	16,655	10,256	14,025	10,241	11,062	13,078	11,928	29,490
Excluding Transfer To Center	2/119,516	9,577	17,707	14,421	9,887	12,737	2,096	8,233	12,676	10,337	21,846
Final Departure— Center Residents	146,581	11,194	19,386	16,601	10,246	13,989	10,151	11,061	12,738	11,843	29,467
Indefinite Leave/3	34,471	3,218	6,884	4,383	3,455	3,715	1,080	2,860	4,308	2,996	2,251
Relocation Purposes	30,779	3,075	6,025	3,780	3,025	3,288	1,778	2,187	3,859	2,676	1,890
Community Invitation/4	7,882	1,125	1,238	1,846	1,188	634	420	921	34	428	-
Education/5	1,108	106	131	106	99	138	48	49	127	180	130
Employment/6	14,089	1,180	1,825	1,078	1,284	1,912	616	711	2,752	1,130	1,461
Join or Accompany Family/7	7,687	707	1,630	863	562	661	610	479	896	814	418
Mixed Marriage Release/8	113	-	109	4	-	-	-	-	-	-	-
Return to Free Area/9	152	-	95	-	-	-	-	57	-	-	-
Armed Forces/10	2,076	143	388	338	276	173	52	110	367	158	60
Institution/11	323	12	29	19	40	108	2	13	61	22	19
Mental	109	4	11	18	6	22	1	6	13	9	15
Penal	186	7	12	1	30	86	1	3	36	4	6
Other	28	1	6	2	2	-	-	4	2	12	-
Department of Justice Internment/12	973	67	223	130	41	35	58	73	69	63	196
Internment	151	2	19	15	1	1	1	10	1	1	101
Voluntary Internment	822	65	204	115	40	34	57	63	68	62	95
To Japan/13	318	18	34	71	22	37	52	15	32	65	17
Other/14	3	-	2	1	-	-	-	-	-	-	-
Terminal Departure/15	82,184	6,088	11,381	9,753	6,540	8,784	1	6,706	7,796	7,089	18,021
With Relocation Grant/16	74,794	5,965	11,232	9,594	6,220	8,652	1	6,880	7,636	6,798	12,839
Without Relocation Grant/17	495	25	108	46	17	45	-	61	47	85	40
Armed Forces/10	373	34	84	77	41	14	-	55	58	38	-
Institution/11	341	28	30	48	35	37	-	48	10	50	12
Mental	68	9	14	9	8	6	-	6	5	8	12
Penal	16	1	3	1	3	3	-	1	3	1	-
Other	157	18	3	38	15	28	-	41	2	17	-
Department of Justice Internment/12	2,147	18	138	44	12	-	-	9	11	2	1,916
Internment	1,598	7	86	27	12	-	-	8	5	2	1,449
Voluntary Internment	549	11	50	17	-	-	-	1	3	-	467
To Japan/13	4,406	-	-	-	-	-	-	-	-	-	4,406
Other/14	1	-	1	-	-	-	-	-	-	-	-
Death/18	1,862	130	320	221	103	188	75	146	195	180	331
Transfer To Center/19	27,964	1,635	1,827	2,234	369	1,288	8,145	2,829	402	1,591	7,644
Central Utah	2,070	-	89	18	14	45	58	14	13	10	1,764
Colorado River	281	7	-	68	22	42	17	19	15	8	40
Gila River	2,418	25	201	-	5	67	1,977	16	3	46	58
Granada	2,042	12	70	12	-	38	587	29	20	52	1,184
Heart Mountain	2,411	30	68	79	11	-	877	67	13	38	1,495
Jerome	1,088	4	18	11	8	3	-	35	-	18	974
Manzanar	134	18	33	27	9	19	3	-	7	1	22
Minidoka	2,434	11	11	14	10	68	25	252	-	1	2,044
Rohwer	2,994	30	27	27	28	41	2,730	41	4	-	37
Tule Lake	12,338	1,481	1,287	2,022	152	994	2,155	2,218	327	1,428	-
Regular	80	12	3	4	2	4	-	50	3	1	-
Segregation	12,248	1,479	1,284	2,018	150	990	2,155	2,168	324	1,425	-
Final Leave Status— Assigned Persons/21	909	18	148	54	50	96	90	1	340	85	23
Indefinite Leave/3	741	23	66	43	50	68	89	1	318	79	20
Relocation Purposes	737	22	62	43	35	58	97	1	316	79	20
Education/5	12	-	2	-	-	1	1	-	7	1	-
Employment/6	579	15	41	34	25	48	67	1	287	71	18
Join or Accompany Family/7	146	7	22	6	10	15	29	-	18	6	1
Armed Forces/10	2	-	-	-	-	-	-	-	1	1	-
Institution/11	1	-	-	-	-	-	-	-	1	-	-
Department of Justice Internment/12	1	-	-	-	-	-	1	-	-	-	-
Terminal Departure/15	168	6	77	22	-	42	2	-	1	6	3
Without Relocation Grant/17	164	5	75	21	-	38	2	-	1	6	3
Armed Forces/10	4	1	1	1	-	1	-	-	-	-	-
OTHER THAN WRA CENTER CUSTODY /22	797	-	-	-	-	-	-	-	-	-	-

1/ Although 119,516 individuals were under the custody of WRA centers from inception to closing, 147,480 persons were accounted for as departing from the ten WRA centers, including some 27,000 persons who transferred to two or more centers before departing for the last time from the custody of WRA. (Total custody, or 120,313 individuals, includes 797 persons never inducted into or assigned to a WRA center who were under general custody of WRA.)

2/ Refers to final departure or leave status for each individual departing from the custody of WRA for the last time. Transfers to other centers are excluded.

3/ Refers to final departure or leave status of evacuees leaving the custody of WRA for the last time between July 1942 and December 19, 1944.

The Evacuated People - A Quantitative Description. Pg. 13
U.S. Dept. of Interior - War Relocation Authority. 1946

TABLE 4.—POPULATION ACCOUNTABILITY BY SPECIFIC TYPE OF FINAL DEPARTURE AND LEAVE STATUS (INCLUDING TRANSFER TO CENTER), BY CENTER: WRA Centers from Inception to Closing (Continued)

4/ Refers to evacuees making arrangements to live in a hotel, hostel, or in a private home approved by a Relocation Officer while arranging for employment and to evacuees going to an area pursuant to a notice from a Relocation Officer that the area was approved and that there were jobs available.

5/ Refers to evacuees leaving the center to attend a college, university, or business or professional school. Does not include school children accompanying parents. Also does not include a number of persons who worked part time to finance their schooling.

6/ Refers to evacuees accepting employment or otherwise engaged in an occupational field.

7/ Refers to evacuees, including children who had not reached their 17th birthday and other dependents, who were accompanying or going to join an evacuee who was relocating or who had already relocated.

8/ Refers to families with one or more non-Japanese members, and to individuals of partial non-Japanese ancestry who were allowed to return to the evacuated area prior to January 2, 1945 (the date the West Coast was reopened to persons of Japanese descent).

9/ Refers to evacuees who were permitted to return to their homes in the evacuated area of Arizona which had been reclassified as a "free area".

10/ Refers to evacuees notified by local Selective Service boards to report for induction into armed forces; to evacuees commissioned or accepted for enlistment in the Army, Navy or auxiliary military language schools; to evacuees volunteering for the armed forces; and to evacuees accepted for enlistment in the WAC, etc.

11/ Refers to evacuees entering mental, other medical, and penal institutions.

12/ Refers to evacuees transferred to the jurisdiction of the Department of Justice. Internment refers to aliens interned under the war power of the United States Government, deported, or held pending deportation proceedings by the Department of Justice. Voluntary internment refers to family members (citizens and aliens) who, of their own volition, joined an interned alien at Crystal City Family Internment Camp.

13/ Refers to evacuees leaving for Japan, including repatriates, expatriates, and family members.

14/ Refers to unauthorized departures from WRA centers, including a hospital patient who wandered into the desert, a fugitive who escaped into the desert, and a mentally deficient young woman who disappeared.

15/ Refers to final departure or leave status of evacuees leaving the custody of WRA for the last time between December 20, 1944, and March 20, 1946.

16/ Refers to evacuees leaving the custody of WRA who requested and were granted financial assistance.

17/ Refers to evacuees leaving the custody of WRA who did not receive financial assistance, including evacuees who over-stayed the expiration date of a short-term or seasonal leave and were automatically converted to a terminal departure without grant.

18/ Refers to evacuees leaving for Japan, including repatriates, expatriates, renunciants, and family members.

19/ Refers to deaths occurring to evacuees in residence at centers or away from centers on short-term and seasonal leave.

20/ Refers to evacuees transferring to a second center from the original or first center of admission or assignment. In certain instances refers to evacuees transferring to a third or fourth center from the second center before departing for the last time from the custody of WRA. Transfers between any two centers are not necessarily equal (see transfers from centers in table 3) because each center accounted for the type of original entry and the type of final departure for every individual coming under its custody; for example, the first center will not account for an individual as being a transfer who transfers to a second center, returns to the first center, and finally departs from the custody of WRA from the first center; the second center will, however, account for the individual in question as being a transfer to and from the first center.

21/ Refers to evacuees who were issued final leave status without being admitted to the center of assignment, including (1) seasonal workers released by WCCA from assembly centers and direct evacuation areas who were assigned to WRA centers, and (2) seasonal workers from Jerome and Tule Lake who were assigned to other centers.

22/ Refers to institutionalized persons transferred to the general custody of WRA from WCCA and other sources who were neither admitted to nor assigned to a WRA center. On June 30, 1946 (the date WRA was relieved of financial responsibility for all institutionalized persons) 577 were still in institutions, 136 were deceased, and 44 were discharged outside a WRA center. (See table 66 for more detailed data on institutionalized persons.)

Source: Final Accountability Rosters for all WRA Centers

Attachment #7
(3 pages)

SECTION VI

NISEI IN THE ARMED FORCES

On June 17, 1942, the War Department discontinued the induction of Japanese Americans, commonly called Nisei, into the armed forces, and accordingly all Nisei were classified IV-C (not acceptable for service because of ancestry). However, at that time there were several thousand citizens of Japanese descent from Hawaii and the mainland who were already in the Army.

It soon became apparent that there was a need for citizens of Japanese descent for teaching the fundamentals of the Japanese language to officers of Military Intelligence, and in other capacities as translators and interpreters. The policy adopted in June 1942 was modified in the late fall of the same year, and about 160 Nisei volunteers were recruited from the various WRA centers.

With the announcement by the Secretary of War that the Army had decided to form a special Nisei combat team, a recruitment program was conducted in February and March under Army supervision at all relocation centers resulting in 1,208 volunteers from the ten centers. The Nisei accepted from these volunteers joined with several thousand volunteers simultaneously recruited from the Hawaiian Islands and with-several hundred who enlisted on the mainland outside of the WRA centers to form the 442nd Regimental Combat Team in April 1943.

The Secretary of War announced that American citizens of Japanese descent were again subject to involuntary induction through the Selective Service System effective January 20, 1944. It was later ruled that Japanese Americans at the Tule Lake Segregation Center would not be subject to Selective Service. It was not until November 18, 1944, that Selective Service set up procedures permitting voluntary induction of Japanese nationals.

WRA had little to do with the actual administration of the Selective Service in the relocation centers. For the most part it was handled according to Selective Service procedure with WRA officials acting as liaison with local draft boards, supplying information to the evacuees when needed, and sometimes furnishing transportation. An attempt was made to keep as accurate records as possible on the disposition of all persons called or volunteering after January 20, 1944, including only those called or volunteering at a WRA center or persons returning to a center prior to reporting for physical examination or induction. As a result, records were collected for some 6,173 persons

The Evacuated People - A Quantitative Description, pg. 125
U.S. Dept. of Interior - War Relocation Authority, 1946

called or volunteering, 2,795 of whom were inducted from WRA centers, 852 were placed in Class 1-A who left the center before their final status was determined, 1,446 were rejected, 315 were arrested for refusal to report for induction or physical examination, and the remainder represented those who were unable to report for pre-induction physical examinations or for induction or active duty because they had relocated before their status was determined or because of illness, etc. No report was received from the local Selective Service boards on some 241 persons who were called.

Table 49 presents the number of Nisei volunteers who were accepted for service prior to the reestablishment of Selective Service on January 20, 1944, and the number inducted from WRA centers after the reestablishment of Selective Service. The first category is limited to those evacuees whose final departure from a relocation center was for the purpose of induction into the armed forces and does not include any evacuees who entered the services after they had relocated. The latter category refers to actual inductions from a WRA center and includes a limited number of relocated evacuees visiting at centers who were inducted directly from the center. War Department releases indicate that between November 1940 and December 1945, some 25,778 Japanese Americans were inducted into the armed forces, 438 of whom were officers and 25,340 enlisted men. It has been estimated that 13,528 were from the mainland and 12,250 from Hawaii.

Table 50 reflects in part evacuee reaction against the reestablishment of Selective Service resulting from a feeling that Japanese Americans had been denied many of their constitutional rights and that, if inducted, certain discriminations would still be practiced against them. Of the 315 arrests due to Selective Service violations, 263 resulted in convictions and 28 in releases.

Table 51 presents the reported casualties suffered by Japanese American soldiers who prior to induction had resided in a center or whose next of kin resided in a center. Since the War Department does not release total casualties by nationality groups, the information in this table was collected by matching the names of individuals appearing in War Department casualty lists against WRA records. When an individual could not positively be identified as either having resided in a center or having next of kin who were or had been in a center, he was omitted from the casualty data. This process was supplemented by WRA center reports on casualties.

The publication, "442nd Combat Team", compiled by members of the 442nd and published by the Information and Education Section of the War Department, summarized casualties to the 442nd (which included the famous 100th Battalion) in the summer of 1945 as follows:

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Killed in action	569
Died of wounds	81
Wounded or injured	3,713
Missing in action	67
Total	4,430

This is not a complete report on Japanese American casualties in the European theater inasmuch as Nisei soldiers served with many groups other than the 442nd. Neither does it include Nisei casualties in the Pacific theater which must have been considerable as War Department figures indicated that there were some 3,000 Nisei serving in the Pacific on V-J Day.

The publication, "442nd Combat Team" referred to above, lists decorations and citations presented up to August 7, 1945, as follows:

Distinguished Unit Citation	3
Distinguished Service Cross	42
Distinguished Service Medal	1
Legion of Merit	13
Silver Star	249
Oak Leaf Cluster to Silver Star	5
Soldiers Medal	11
Bronze Star	579
Oak Leaf Cluster to Bronze Star	24
Army Commendation	13
Division Commendation	62
Total	1,002

Since that time the Combat Team has been awarded four more Distinguished Unit Citations, one Congressional Medal of Honor, and numerous other citations, including Silver and Bronze Stars.

The Evacuated People - A.Quantitative Description, pg. 127
U.S. Dept. of Interior - War Relocation Authority, 1946

Attachment #8
(3 pages)

ORGANIZATIONAL ENDORSEMENTS FOR REDRESS

The following is a list of major endorsements for JACL-LEC's legislative campaign for redress. "Endorsement" often denotes organizational support for the recommendations made by the Commission on Wartime Relocation and Internment of Civilians, including individual monetary compensation for former internees. The term may also mean that an organization has acknowledged the injustice of the internment, but has not addressed the question of monetary redress.

NATIONAL

National League of Cities
U.S. Conference of Mayors

CONGRESSIONAL

Congressional Black Caucus
Congressional Hispanic Caucus

STATEWIDE

California State Assembly
California State Senate
Calif. Assn. of Human Rights Organizations
Hawaii House of Representatives
State of Hawaii
Office of Hawaiian Affairs
Gov. of the State of Illinois
Illinois Committee on Intergovernmental Relations
Gov. of Massachusetts
Minnesota State Legislature
State of Missouri
New Jersey General Assembly
New York State Legislature
Oregon State Legislature
State of Washington
Governor, State of Washington
State of Wisconsin
State Advisory Chairs - U.S. Commission on Civil Rights
Western Governors' Conference

COUNTYWIDE

California 2nd Dist. Board of Supervisors
Contra Costa County Supervisors

COUNTYWIDE (cont.)

King County (WA) Democratic Central Committee
Marin County Human Rights Assn.
Marin County Human Rights Comm.
Monterey, CA Bd. of Supervisors
Multnomah, Ore. County Commissioners
Placer County Supervisors
Sacramento, CA County Supervisors
San Francisco City & Co. Supervisors
San Mateo Supervisors
Santa Clara County Supervisors
Santa Cruz, CA Bd. of Supervisors
Ventura County Supervisors

CITYWIDE

City of Cambridge, Mass.
City of Chicago City Council
Cleveland, Ohio City Council
El Cerrito, CA City Council
Marina, CA City Council
Orinda-Lafayette-Moraga Council for Civic Unity
Orinda-Moraga Democratic Club
New York City Council
Mayor, City of New York
City of Philadelphia, PA
Portland City Council
Richmond, CA City Council
Sacramento City Council Members
Salinas City Council
Salinas Valley Democratic Club
San Jose City Council
Seaside City Council
Seattle City Council
Watsonville City Council

POLITICAL

Americans for Democratic Action, National Bcard
Democratic Party Platform
Republican Party Platform
Oregon State Rainbow Coalition
Washington State Democratic Central Committee

CIVIL RIGHTS/ETHNIC ORGANIZATIONS

American Civil Liberties Union Foundation
ACLU of Monterey County
American Jewish Committee
American Jewish Congress
American Jewish Congress Executive Committee
American Jewish Congress of No. Calif. Division
Anti-Defamation League of B'nai B'rith
Anti-Defamation League, Nat'l Civil Rights Exec. Comm.
Chinese American Citizens Alliance
Chinese American Service League
Jewish Community Council of Greater Washington, D.C.
Jewish Community Relations Council of Greater Eastern Bay
Jewish Community Relations Council of S. New Jersey
Jewish Community Relations Council of Greater Philadelphia
Jewish Community Relations Council of Seattle
Jewish Community Relations Council, National Advisory Bd.
National Council of La Raza
Pan American Nikkei Association

PROFESSIONAL ORGANIZATIONS

American Bar Association
American Federation of Teachers
American Immigration Lawyers Assn
American Orthopsychiatric Assn.
American Psychiatric Assn.
American Public Health Assn.s
Assn. of Asian American Educators
California State Bar Association

PROFESSIONAL ORG.S (cont.)

California Flower Cooperative
California State Teachers Assoc.
Civil Rights in Education Committee, State Council, CTA
National Assoc. of Social Workers, Minority Issues Conference
National Education Association
Peralta Federation of Teachers
Philadelphia Fed. of Teachers

LABOR ORGANIZATIONS

AFL-CIO Executive Council
AFL-CIO of Florida
Calif. Labor Federation, AFL-CIO
Calif. Labor Federation, Exec. Council, AFL-CIO
Internat'l Brotherhood of Teamsters; Chauffeurs, Warehousemen & Helpers of America
Internat'l Brotherhood of Teamsters; American Communications Assoc.
Internat'l Longshoremen's and Warehouse Union
Federated ILWU Auxiliaries 1985 Convention
ILWU Auxiliaries 1986 Convention
ILWU Calif. Auxiliaries #16 & 17
ILWU Locals #6, 8, 10, 12, 28, 40, 50, 53, and 92
ILWU Columbia River and No. California Dist. Councils
Office and Professional Employees International Union, 1986 Convention
Office and Professional Employees, Local 29, AFL-CIO
Service Employees International Union, Local 87, AFL-CIO

VETERANS GROUPS

34th Infantry Division Association of Chicago
34th Infantry Division Association of Minneapolis
503 Parachute RCT Association
American Legion, Chicago Nisei Post 1183

VETERANS GRPS (cont.)

American Legion, 6th Dist. Council, Dept. of Illinois
American Legion, 66th Nat'l Convention
Jewish War Veterans of the USA
Veterans of Foreign Wars
Veterans of Foreign Wars, Americanism Com., Dept. of Calif., 64th Ann'l Convention
Vet. of Foreign Wars, Dept. of CA
Veterans of Foreign Wars, USA, 85th Nat'l Convention
Veterans of Foreign Wars, Dept. of North Dakota

CIVIC/CULTURAL ORGANIZATIONS

Committee on Police & Fire, Ill.
League of Women Voters, Salinas
Northshore Kiwanis
Salinas Bonsai Club
Satsuma Bonsai Club
Urban League of Portland

RELIGIOUS ORGANIZATIONS

American Friends Service Comm.
American Baptist Churches, USA
Asian American Baptists
Buddhist Churches of America
Buddhist Temple of Salinas
Christ Church, Diocese of Calif.
Christian Church (Disciples of Christ), General Board
Church of Brethren, Gen. Board
Congregation of Nevah Shalom
Disciple of Christ, Gen. Board
Ecumenical Ministries of Oregon
Episcopal Church Center
Episcopal Church, Exec. Council
Episcopal Church, General Convention, Sept. 1985
Episcopal Church (Trinity) Rector, Warden and Vestry
Episcopal Asiamerica Strategies Task Force, Bay Area Convoc.
Immanuel Lutheran Church Society
Japanese Presbyterian Conference

RELIGIOUS ORG.S (cont.)

Lutheran Church in America, Comm. of Reference and Counsel
Association of Evangelical Lutheran Churches
Lutheran Church, Red River Valley Synod
Presbyterian Churches: Lincoln Ave., & Parkview
Presbyterian Church of USA, 1984 General Assembly
Presbyterian Synod of Alaska
Presbytery of the Cascades
Presbytery of Riverside
Religious Society of Friends, San Francisco, Calif.
Second United Unitarian Church
United Church of Christ, 14th Gen. Synod
United Methodist Church, Calif.-Nevada Annual Conference
United Methodist Church, Calif.-Pacific Annual Conference
United Methodist Church, Pacific/Southwest Conference
United Methodist Church, National Federation of Asian American U. Methodist 1987 Convocation
United Methodist Church, Board of Church and Society
United Methodist Church, 1980 General Conference
United Methodist Church, USA General Assembly
United Presbyterian Church

MISC. ORGANIZATIONS

Asian Pacific American Advocates of California

as of March 25, 1987

STATEMENT

GO FOR BROKE NISEI VETERANS ASSOCIATION

ENDORSING S. 1009

(Accepting Findings and Implementing Recommendations Of Commission on Wartime Relocation and Internment of Civilians)

TO THE

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE
COMMITTEE ON GOVERNMENTAL AFFAIRS

United States Senate

June 17, 1987

-oOo-

Prepared and Submitted by
Mike M. Masaoka
Mary Toda
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In Memoriam
Minoru Yasui

SUMMARY MEMORANDUM

This statement of the Go For Broke Nisei Veterans Association uses a Question and Answer format, except for the Introductory Comments and the Concluding Comments.

The Question is stated, followed by a one sentence summary of the Answer, and then the more detailed Answer with explanations.

The Questions Asked, with Responses, are as follows:

1. What Were the Findings of the Commission?
2. What Did the Commission Recommend?
3. What Are Some Criticisms of the Commission Report?
4. What Are the Findings of Fact in S. 1009?
5. What Are the Purposes and Objectives of S. 1009?
6. What Amendments Would Be Appropriate?
7. What Are Examples of Public Educational Activities?
8. Why Shouldn't Japan Provide Redress Payments?
9. Why Should Only Japanese Americans Be Compensated?
10. Didn't the Supreme Court Find Evacuation Constitutional?
11. Wasn't the Evacuation Claims Act of 1948 Redress?
12. Why Monetary Redress?
13. What Are Views of the Department of Justice?
14. What Was Military Necessity?
15. What About the Latest Intelligence Reports?
16. Didn't Japanese Americans Cooperate With the Army?
17. Why Did Japanese Americans Volunteer For the Army?
18. Isn't A "Bad" Precedent Being Established?
19. Why Is Redress So Urgently Needed Now?

GO FOR BROKE NISEI VETERANS ASSOCIATION

STATEMENT ON S. 1009

To The

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE

Committee on Governmental Affairs, United States Senate

-oOo-

Mr. Chairman, and Members of the Subcommittee:

My name is Mike Masaoka, residing in Chevy Chase, Maryland, with offices in the Farragut Building in Washington, D.C.

Introductory Comments

As one of the few active survivors of the unprecedented, cruel, and arbitrary experiences suffered by those of Japanese ancestry in the United States as victims of the unique vicissitudes of World War II and of the legislative and litigative efforts thereafter to secure corrective and remedial legislation and related responses from the Congress, the President, and the Judiciary, my fellow veterans of both the military and evacuation epics and I appreciate very much this opportunity to appear before this Subcommittee and to testify as to our feelings regarding this long overdue attempt to provide a modicum of redress and equity.

Now, in the twilight of our lives dedicated to seeking justice, dignity, and equality for those of Japanese ethnicity through the established procedures of our ever expanding and understanding democracy, we trust that this can be our final plea for the enactment of this well-intentioned measure that will as far as reasonably possible in this imperfect and unfair world tend to assuage the tragedies and travails we endured, through no fault of our own, because our Constitution, but more rightly the Government and the people, failed us in our most desperate hour almost half a century ago.

We are persuaded that, although this token solatium being considered cannot "make us whole again" either as individuals or as a racial minority in our population, we have the responsibility to our fellow citizens to insist upon early enactment as a means to assure that a repetition of our plight will become more difficult, if not impossible, in another era of hate, hysteria, and hostility and the rights, liberties, and opportunities of other individuals and groups, however small or unpopular, will remain invulnerable and inviolable in spite of the fates.

Having learned through involuntary personal involvement that none is secure and safe unless all are free and responsible, we are of the faith that enactment of this specific legislation will establish the precedent that the price of prejudice and intolerance is an expensive and costly one. This is as it should be. So, S. 1009 is not only for past transgressions but also a guarantee and a safeguard against future atrocities and genocidal tendencies in civil and human rights.

Why, Mr. Chairman, in this historic First Session of this 100th Congress, did more than 70 United States Senators led by Spark M. Matsunaga of Hawaii and including both the Majority and the Minority Leaders, join in introducing S. 1009, "To accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians", with a companion bill, H.R. 442, introduced by a bipartisan coalition of more than 135 Congressmen in the National House of Representatives?

And why does the Go For Broke Nisei Veterans Association, the umbrella national organization of Japanese American veterans of World War II, among many others, so strongly support early passage in this bicentennial commemorative year of the United States Constitution, with its Bill of Rights and other meaningful Amendments?

Why 45 years after we Americans of Japanese race were presumed arbitrarily and capriciously by our own Government to be disloyal to the country of our birth and citizenship and forcibly mass evacuated from our lifelong homes and associations on the West Coast, excluded therefrom, and most imprisoned in virtual desert and wilderness camps in the frontier West, are S. 1009 and H.R. 442 being seriously considered? After all, we were presumed disloyal without resort to our constitutional rights to indictments or charges of any criminal or overt act for which we were responsible, without the assumption of innocence until proved otherwise, without elemental due process of any kind, such as confronting our accusers, receiving reasonable bail, participating in any hearings or trials by our peers, and dogmatically deprived of "life, liberty, and property" at a time when our civil courts were freely and normally functioning, when even the Army conceded that there was not sufficient danger or threat of danger from the enemy to require martial law and most of the routine activities of the Pacific Coast and the Nation were in operation on a "business as usual" basis.

Why this encouraging activity toward redress at this time?

To us, the answers are relatively self-evident.

In the four and a half decades since those wartime aberrations of our constitutional system were authorized and implemented, many new facts, information, and considerations have come to our attention, including rather startling revelations discovered and exposed under the Freedom of Information Act. And, today, there is a greater appreciation and enlightenment in our land and internationally of civil and human rights, freedom, equality, dignity, ethnicity, opportunity, etc., without regard to race, nationality, country of origin, color, religion and creed, age, sex, conditions of servitude, etc. Nor can one underestimate the tremendous impact of the election of the four American Japanese Congressmen, Senators Daniel K., Inouye and Spark M. Matsunaga of Hawaii and Representatives Norman Y. Mineta and Robert T. Matsui of California, each of whom has a personal dedication to this common cause which is legendary.

While in training for overseas combat duty, the two military heroes from Hawaii, which was then a Territory whose substantial Japanese American population had not been evacuated, learned of the bitter, humiliating, and degrading experiences to which their fellow citizens of Japanese race on the West Coast were subjected while visiting two of these internment camps in Arkansas, the ones at Jerome and at Rohwer. Mineta, a Korean War veteran, was a youngster who was incarcerated with his family in the cold, windy Heart Mountain camp in northern Wyoming, while Matsui, then an infant in arms, suffered permanent ear injury because of the lack of proper medical facilities in the swampy, damp Tule Lake camp in northern California near the Oregon border. Almost single-handedly Matsunaga personally solicited a record 74 of his colleagues to join in co-sponsoring S. 1009. Another example of his personal crusade in that, late in the war, after being twice wounded as a combat officer with the original 100th Infantry Battalion at Casino, Rapido River, and Anzio beachhead in Italy and reassigned to the Military Japanese Language School at Fort Snelling, Minnesota, he spoke voluntarily to more than 200 clubs, churches, schools, and other opportunities about the West Coast evacuees and urged that Midwesterners welcome them as they left their respective camps and help them find housing and employment in the normal communities outside the excluded zones on the Pacific Coast.

But most crucially, it was the 1980 creation by the Congress of the nonpartisan, investigative Commission on Wartime Relocation and Internment of Civilians (Commission) which, as directed, researched and reviewed the facts and circumstances concerning that entire 1942 mass military movement from the West Coast popularly characterized as the evacuation (eviction, exclusion, relocation, and most often prison-like detention) of those of Japanese ancestry, and recommended "appropriate remedies". Its report was the first official judgment after World War II of that wartime tragedy. Not to be ignored, too, are the unmatched gallantry and patriotism of Japanese American troops in every theater of operations in World War II, the quiet dignity and remarkedly restrained and disciplined conduct of the overwhelming majority of the evacuees under demanding circumstances that would have destroyed most other people, and the miraculous development of democracy, capitalism, and the mutually advantageous partnership and alliance with the New Japan.

Finally, in this Bicentennial of the drafting and signing of our national Charter, there will be hundreds and thousands of discussions and arguments concerning every imaginable aspect of our Constitution, its Bill of Rights, and the other 16 Amendments, including the three Civil War reconstruction amendments XIII, XIV, and XV, relating to slavery, citizenship rights, and voting. No doubt the World War II mistreatment of American Japanese in spite of the declared constitutional protections will be among the major studies. In the light of these activities, Congress would be remiss if the National Legislature failed to consider what many consider the worst aberration of statutory guaranteed safeguards in this century.

On behalf, first, of Go For Broke, Inc., and presently by its successor Go For Broke Nisei Veterans Association, I have presented detailed and lengthy prepared statements and testified orally at all three of the public hearings held by the House Judiciary Subcommittee on Administrative Law and Governmental Relations in 1984 (pages 151 to 293 of the printed reports), in 1986 (pages 579 to 698 of the printed reports), and earlier this year (1987), (printed hearings not yet available). Respectfully, I commend my statements and testimonies to the Members and staff of this Subcommittee for a more complete summary of our view and thinking as to this instant legislation.

Question and Answer Format

As perhaps the most expeditious and constructive way in which I may be helpful to the Subcommittee, the full Committee, and the entire Senate itself at this time, when so much is generally known about the general background and purposes of this legislative proposal, may I resort to summarizing the most asked and troublesome questions and then briefly respond to them as best I can as the representative of the Go For Broke Nisei Veterans Association. Of course, for obvious reasons, we will add rhetorical questions and answer them for the information of the Congress. In other words, I would like to prepare the gist of my Statement in a Question and Answer format.

We plan to ask a question, provide a one sentence summary of our answer, and then proceed to expand and enlarge upon that response with details, etc. We hope to produce a complete statement of our views on this entire subject in order that what may become the final hearings to be printed by the Congress on this topic will be a comprehensive and perceptive expose of our reasoning, our experiences, and our hopes.

Most of the questions and answers may be repetitious with other witnesses and statements, but our perspective, both as veterans of the evacuation movement and of the military battles overseas in the Mediterranean and European Theaters against German Naziism and in Asia and the Pacific Theaters against Japanese Fascism, as well as my personal perspectives as the wartime National Secretary of the Japanese American Citizens League (JACL), the largest and oldest of the national Japanese American organizations, and as the noncommissioned officer in charge of the 442nd Combat Team's Public Relations and Information Office, may be slightly different.

Moreover, if any Senator or any staff member have any questions at all to ask after these hearings, I would be pleased to respond quickly, either by telephone or by letter as the case and situation may dictate.

Incidentally, these questions and answers are not identified or listed alphabetically, or in order of their importance, or in terms of the number of times asked, etc. Most are at random, as they may have occurred to me in preparing this statement.

My answers, responses, and comments are deliberately more detailed and explanatory than perhaps necessary, for it is our wish that the Subcommittee Members understand fully our deep and heartfelt feelings about the most humiliating and traumatic years of our existence. Furthermore, we hope to submit for the official record more than mere summaries and commentaries for brevity's sake; we hope that Members will want to read through this lengthy recapitulation and begin to appreciate what really is at stake in this legislation.

1. What Were the Findings of the Commission?

Summary: Not "military necessity" but "race prejudice, war hysteria, and a failure of political leadership" was responsible for the evacuation.

The Commission on Wartime Relocation and Internment of Civilians issued its historic report in two parts.

Part 1 of the Report entitled "Personal Justice Denied" is a 467-page documentary that satisfies two of the three directives mandated by the Congress in its authorizing legislation, to (1) "review the facts and circumstance surrounding Executive Order Numbered 9066, issued February 19, 1942, and the impact of such Executive Order on American citizens and permanent resident aliens" and (2) "review directives of the United States military forces requiring the relocation, and in some cases, detention in internment camps of American citizens..."

Part 2, which has to do with the Commission's Recommendations, emphasizes the Commissioners' findings and conclusions that

> In sum, Executive Order 9066 was not justified by military necessity, and the decisions that followed from it--exclusion, detention, the ending of detention and the ending of exclusion--were not founded upon military considerations. The broad historical causes that shaped

> these decisions were race prejudice, war hysteria and a failure of political leadership. Widespread ignorance about Americans of Japanese descent contributed to a policy conceived in haste and executed in an atmosphere of fear and anger at Japan. A grave personal injustice was done to the American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II.
>
> The excluded people suffered enormous damages and losses, both material and intangible. To the disastrous loss of farms, businesses and homes must be added the disruption for many years of careers and professional lives, as well as the long-term loss of income, earnings and opportunity. Japanese American participation in the postwar boom was delayed and damaged by the losses of valuable land and growing enterprises on the West Coast which they sustained in 1942...
>
> Less tangible , the ethnic Japanese suffered the injury of unjustified stigma that marked the excluded. There were physical illnesses and injuries directly related to detention, but the deprivation of liberty is no less injurious because it wounds the spirit rather than the body. Evacuation and relocation brought psychological pain, and the weakening of a traditionally strong family structure under pressure of separation and camp conditions. No price can be placed on these deprivations...

2. What Did the Commission Recommend?

Summary: Recommendations included a national apology, presidential pardons for certain wartime criminal activities based on ethnicity and racism, restitution of employment and entitlements, appropriating monies to establish a special public educational fund, and to authorize individual and collective redress, totalling $1.5 billion, with $20,000 for individual evacuees and $300 million as collective restitution to the Japanese American evacuee population, including those who died during evacuation and since.

Part 2 of the Commission Report recommended five measures that have been incorporated into S. 1009, noting that "each measure acknowledges to some degree the wrongs inflicted during the war upon the ethnic Japanese. None can fully compensate or, indeed, make the group whole again". The several forms of remedies comprise "an act of national apology" in the words of the Commission.

> 1. The Commission recommends that Congress pass a joint resolution, to be signed by the President, which recognizes that a grave injustice was done and offers the apologies of the nation for the acts of exclusion, removal and detention.

2. The Commission recommends that the President pardon those who were convicted of violating the statutes imposing a curfew on American citizens on the basis of their ethnicity and requiring the ethnic Japanese to leave designated areas of the West Coast or to report to assembly centers. The Commission further recommends that the Department of Justice review other wartime convictions of the ethnic Japanese and recommend to the President that he pardon those whose offenses were grounded in a refusal to accept treatment that discriminated among citizens on the basis of race or ethnicity. Both recommendations are made without prejudice to cases currently before the courts.

3. The Commission recommends that Congress direct the Executive agencies to which Japanese Americans may apply for the restitution of positions, status or entitlements lost in whole or in part because of acts or events between December 1941 and 1945, to review such applications with liberality, giving full consideration to the historical findings of this Commission. For example, the responsible divisions of the Department of Defense should be instructed to review cases of less than honorable discharge of Japanese Americans from the armed services during World War II over which disputes remain, and the Secretary of Health and Human Services should be directed to instruct the Commissioner of Social Security to review any remaining complaints of inequity in entitlements due to the wartime detention.

4. The Commission recommends that Congress demonstrate official recognition of the injustice done to American citizens of Japanese ancestry and Japanese resident aliens during the second World War, and that it recognize the nation's need to make redress for these events, by appropriating monies to establish a special foundation.

The Commissioners all believe a fund for educational and humanitarian purposes related to the wartime events is appropriate, and all agree that no fund would be sufficient to make whole again the lives damaged by the exclusion and detention. The Commissioners agree that such a fund appropriately addresses an injustice suffered by an entire ethnic group, as distinguished from individual deprivations.

Such a fund should sponsor research and public educational activities so that the events which were the subject of this inquiry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood. A nation which wishes to remain just to its citizens must not forget the lapses. The recommended foundation might appropriately fund comparative studies of similar civil liberties abuses or of the effect upon particular groups of racial prejudice embodied by government action in times of national stress; for example, the fund's public educational activities might include preparing and distributing the Commission's findings about these events to textbook publishers, educators, and libraries.

5. The Commissioners, with the exception of Congressman Lungren, recommend that Congress establish a fund which will provide personal redress to those who were excluded, as well as serve the purposes set out in Recommendation 4. Appropriations of $1.5 billion should be made to the fund over a reasonable period to be determined by Congress. This fund should be used, first, to provide a one-time per capita compensatory payment of $20,000 to each of the approximately 60,000 surviving persons excluded from their places of residence pursuant to Executive Order 9066. The payments should be made to the oldest survivors first. After per capita payments, the remainder of the fund should be used for the public educational purposes discussed in Recommendation 4 as well as for the general welfare of the Japanese American community. This should be accomplished by grants for purposes such as aid to the elderly and scholarships for education, weighing, where appropriate, the effect of the exclusion and detention on the descendants of those who were detained. Individual payments in compensation for loss or damage should not be made.

The fund should be administered by a Board, the majority of whose members are Americans of Japanese descent appointed by the President and confirmed by the Senate. The compensation of members of the Board should be limited to their expenses and per diem payments at accepted government rates.

The bill under consideration by this Subcommittee, S. 1009 provides for the acceptance and implementation of the findings and recommendations of the Commission on Wartime Relocation and Internment of Civilians and is, therefore, completely acceptable to us; in fact, S. 1009 is a welcome document which translates our hopes and objectives for redress into a meaningful bill which should commend itself to the members of Congress, the Executive Branch, and to the Judiciary, not to mention the public at large.

3. **What are the Principal Criticisms of the Commission's Report**?

Summary: Three most heard criticisms were (1) the bias and competence of the Commissioners, (2) wartime fears and atmosphere of the times were not considered, and (3) much classified and secret intelligence discoveries were not mentioned.

Considering the quantities of "hate" mail received by certain members of the Congress when this redress program was first announced, editorial, organizational, and individual criticisms of the Report of the Commission released in December 1982 have been rare and relatively reserved in language. Indeed, most evaluations of the report praised its overall coverage and impartiality, though several opposed monetary compensation for the evacuees.

What criticisms we did hear were largely in three categories: (1) those who questioned the bias and the competence of the commission members, (2) those who alleged that the wartime fears of the military and the general West Coast population were not taken into account, and (3) those who claimed that the Commission had failed to discover and publicize much classified and secret documents and data that would disprove current thinking and thoughts about the need and necessity for legislative redress.

To begin with, we know that it is a long approved and time-honored practice to appoint bipartisan commissions and boards to investigate specific subjects. Thus, the establishment of the Commission was nothing new, nor novel, nor unique and it was not deliberately contrived by the advocates of this proposition to advance its progress. In this instant case, for example, the President, the Speaker of the National House of Representatives, and the President pro tempore of the United States Senate each appointed three Commissioners without regard to party affiliations or political ideologies.

Seven of the nine are experienced and eminent attorneys at law: Joan Z. Bernstein, Chair, Daniel E. Lungren, Vice Chair, Edward W. Brooke, Robert Drinen, Arthur S. Flemming, Arthur J. Goldberg, and William M. Marutani. Bernstein has not only served in various government posts but also has been General Counsel in at least two Cabinet Departments. Lungren is currently a member of the House Judiciary Committee. Brooke is a former United States Senator from Massachusetts; Drinen is a Catholic Father and also a former member of the House of Representatives. Flemming has been a former Cabinet Secretary, chairmen of several presidential commissions, and one of the most distinguished public servants in American life, as is Goldberg, a former Cabinet Secretary, a former Associate Justice of the United States Supreme Court, the Permanent Representative, with the rank of Ambassador, to the United Nations, among many honors. Marutani, the only evacuee Commissioner, was formerly a Judge of the Court of Common Pleas in Philadelphia, Pennsylvania

Of the two non-attorneys, Hugh B. Mitchell of Washington State, businessman, is a former United States Senator, and Ishmael V. Gromoff is a Catholic Priest who ministers to the Aleuts and other native Americans in Alaska.

This is as distinguished a group of representative Americans as one could find, embracing the liberal, moderate, and conservative philosophies and several races and religions, as well as most segments of our national population. All have had extensive experience serving on investigative and other commissions and agencies; all have demonstrated the ability to judge facts and evidence and to balance the factors which make for justice and fairness in the determination of findings, conclusions, and recommendations. At least four have served in the armed forces, so are mindful of the military's special status and powers, especially in wartime.

Special Counsel Angus Macbeth is an experienced lawyer who has directed a number of similar investigations for governmental and private parties. Considered one of the more able, wise, and resourceful young lawyers in the country today, the Commission was fortunate to have been able to secure his services.

Few can legitimately criticize the members of the Commission, and it is noteworthy that such criticisms as we are aware of are in general terms and not as to specific Commissioners and specific objections.

The Commission held 120 days of public hearings in various cities across the country, including Alaska and the West Coast, listened to and questioned more than 750 witnesses, including many evacuees themselves, former Government officials involved in this mass movement, public figures, interested citizens, historians, and academicians, etc. In addition, an excellent research staff assisted the Commission in its extensive and exhaustive studies, especially of classified and secret materials and documents not previously available.

It is difficult to conceive of a more comprehensive and complete review, and certainly no individual or ordinary organization could match its resources, facilities, and expertise, regardless of one's predictions and presumptions.

As for the second charge that the Commission failed to take into account the political climate both in Washington and on the West Coast, the public perceptions, and the "war mood" in the spring of 1942, the answer is rather obvious if one studies the reports and the recommendations of the Commission that the Commissioners were far better equipped than any others to ascertain and evaluate what happened 45 years ago.

All were adults in those World War II years and were subject to the news and events in those days as were most other of what took place even though then they might not have understood the implications. They can remember the mood and the temper of the times. Over the decades since, because of their professions and personal experiences, practically all of the Commissioners have become more perceptive, skilled, and sophisticated as evaluators of individuals and events. They have become skilled and reliable investigators and interrogators. With their professional staffs, it would be my observation that they are far more qualified and less biased and prone to allow emotional and other arbitrary appeals to color facts and individuals than most lay people or even many public officials who were not born before World War II and may have authored articles and books on this tragic and still generally misunderstood phase of our history.

For the record, may I state that I was the National Secretary and Field Executive of the Japanese American Citizens League (JACL) from August 1941 to June 1943 when I reported for induction into the 442nd Regimental Combat Team. And, to the best of my knowledge and belief, I am the only surviving national officer of the JACL who--at one time or another--met most, if not all, of the major officials, both military and civilian, who were responsible for this wartime agony and discussed various aspects of this evacuation, detention, and relocation travail before, during, and after the issuance of Executive Order 9066, which was issued February 19, 1942.

Since I was not required to undergo the so-called evacuation process, although my family members were, I am not competent to address myself to actual camp life as an inmate in both the so-called assembly centers and the relocation camps. But I do claim to be as knowledgeable as any evacuee to the public events, decisions, and actions precipitated by the attack on Pearl Harbor December 7, 1941.

After more than two years with the 442nd, I returned to JACL to become its Washington Representative, a full-time activity until the summer of 1952 when I accepted a part-time retainer arrangement with JACL until 1972, when I voluntarily retired as a paid staffer, though retaining my membership in JACL.

For what it is worth, based on my personal recollections and a quick review of documents and publications available to me over the years, including most--if not all--of the major nonfiction books and papers written on the subject during the past half century and more, I can testify that the Commission findings are factual, accurate, and impartial. Many previously classified and/or unknown details, much of it obtained under the Freedom of Information Act, are revealed and exposed for the first time.

As for the third criticism, that is that the Commission was not able to discover and study many classified and still secret documents and knowledge, may I note that they had much more information and materials than any other commission, organization, or individual that I am aware of and many were only recently declassified and available. Indeed, when the so-called Magic Cables were identified as perhaps having some information of interest after the Report of the Commission was issued, its members secured copies and released a special addendum dealing with its contents. Regardless, the Commission had available more "interesting and relevant" materials than any other organization up to the time of releasing its Report. Its summaries were as up-to-date and "last minute" as they could be expected to be. We shall have more to say on this subject later.

Understandably some individuals, including former Government and military officials, may have some special information of their own that may not have been disclosed. Or, they have heard rumors and/or stories that they believe are accurate and true. If there are such individuals, I am confident that the Subcommittee would be pleased to have that information and to give such data the credence they deserve. But, to fault a public commission for not having or knowing of such private knowledge is neither fair nor just. And, we should keep in mind that no one can know when every last bit of evidence or rumor has been found and analyzed.

In summary, it can be correctly claimed that no specific finding or conclusion of the many made by the Commission have been found to be in error, improper, and/or unreasonable under the most careful scrutiny possible. How many commissions can make similar claims? And, since Congress itself established the Commission and appointed two-thirds of its members, surely the National Legislature cannot repudiate the findings of its own Commission without unusual substantial justifications and proofs to the contrary, which--to my knowledge--have not been produced. Unless the conclusions of national commissions are given extraordinary credence and authority, soon no respectable and responsible citizen or official will ever serve on such public investigative bodies.

4. What Are the Findings of Fact in S. 1009?

Summary: The Senate Bill accepts the findings of the Commission in every respect; that there was no espionage, that there were no military or security reasons for evacuation, that those removed and excluded suffered material and intangible damages, and that there is international, as well as national, concern and interest in this legislation.

Section 1(a) of the instant bill declares that "The Congress finds that (1) the findings of the Commission...describe the circumstances of the evacuation, relocation, and internment of in excess of one hundred and then thousand United States citizens and permanent residents of Japanese ancestry..."

Paragraph (2) clearly sets forth the official record that "the evacuation, relocation, and internment of individuals of Japanese ancestry was carried out without any documented acts of espionage or sabotage, or acts of disloyalty by any citizens or permanent resident aliens of Japanese ancestry on the West Coast".

Paragraph (3) refutes the public asserted military explanation given in 1942 as the formal justification for the arbitrary mass Army movement, emphasizing that "there was no military or security reason for the evacuation, relocation, and internment".

Paragraph (4) exposes the true and actual reasons for the issuance of Executive Order 9066 and its resultant catastrophies, charging that "the evacuation, relocation, and internment of the individuals of Japanese ancestry was caused by racial prejudice, war hysteria, and a failure of political leadership".

Paragraph (5) points out that "the excluded individuals of Japanese ancestry suffered enormous damages and losses, both material and intangible, and there was incalculable losses in education and job training, all of which resulted in significant human suffering for which full and appropriate compensation has not been made".

Paragraph (6) explains the national concern and the international interest in this significant legislation by summarizing the major rationale for the urgency and the necessity for its speedy enactment: "the basic civil liberties and constitutional rights of those individuals of Japanese ancestry were fundamentally violated by that evacuation and internment". We add the personal comment that the decades since that travail passed with great rapidity and those of us who live on to survive continue to pay the costs of our ordeal in physical and other ways.

Inasmuch as these findings specified in S. 1009 are identical to those reported, with documentation and when necessary by arguments and clarifications, by the Commission, there is no reason to question the validity of these factual specifications as accepted by the Congress.

5. **What Are the Purposes and Objectives of S. 1009?**

Summary: The Senate bill seeks an appropriate way to acknowledge the fundamental injustice done evacuees, apologizes for that wartime mistreatment, establishes a public education fund, and authorizes restitution to interned Japanese Americans.

Since the congressional findings of fact are enunciated in Section 1(a) of S. 1009, Section 1(b) sets forth the specific purposes and objectives of this legislation as agreed to by the more than 70 Republican and Democratic sponsors in the Senate.

Paragraph Section 1(b)(1) seeks an appropriate way in which to "acknowledge the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens".

Paragraph (2) would be to "apologize on behalf of the people of the United States for the evacuation, relocation, and internment of such citizens and permanent resident aliens".

Paragraph (3) would provide "a public education fund to finance efforts to inform the public about the internment of such individuals so as to prevent the reoccurrence of any similar event".

Paragraph (4) would authorize and "make restitution to those individuals of Japanese ancestry who were interned".

6. What Amendments Would Be Appropriate?

Summary: (1) Petitioning Supreme Court to review and reverse evacuation test cases, (2) amend definition of eligible individual, (3) amend restitution provision by placing a deadline for the Attorney General to "locate" and "pay" eligible evacuees, and (4) further amend restitution proviso to preclude collection of taxes on payments or denial of entitlement benefits because of such payments.

We would amend Title I as follows: On line 6, page 6, before the word "evacuation" add the word "unconstitutional", and on line 8, also on page 6, follow the period after the word "apologizes" add the new sentence: "The Congress therefore respectfully petitions the Supreme Court of the United States to take cognizance of the apology by Congress and to take the first opportunity to overrule the Japanese American cases as a violation of fundamental constitutional principles".

Former Dean of the Yale Law School Eugene Rostow and a former Assistant Secretary of State, now a Professor of Constitutional Law at the National Defense University, who wrote the first critical article in a national magazine in 1942 condemning the evacuation as "Our Worst Wartime Mistake", articulated this concept which we ourselves had urged in less precise language in our testimony to the House Judiciary Subcommittee on Administrative Law and Governmental Relations at its hearings in 1984 (page 151, printed Hearings, 98th Congress,Second Session, Serial No. 90, June 20, 1984) in his testimony to this same Subcommittee on April 28, 1986 (page 230, Hearings on H.R. 442, Part 1, Serial No. 69, 99th Congress, Second Session) and which we had repeated at the same hearings, beginning on page 579. Dean Rostow declared:

> ...In the long run we should concern ourselves not simply with redressing the injustice to individuals caused by the program, but on the fact that the precedent is embodied in our law...
>
> When I wrote my article, I had no difficulty reaching the conclusion that this decision was based on race and only on race and not on military necessity...Justice Black's opinion is evidence enough about the basis for the decision, without looking for a conspiracy.
>
> I think it is a great mistake to do that because it tends to dilute the responsibility which every branch of the Government faces. We talk about this as if it were a decision only of the War Department, only of the executive branch; it was not. There was a statute underlying the relocation orders, and Congress shared in the responsibility, but above all, if you try to remove yourself from the atmosphere immediately after Pearl Harbor and the very natural and real panic in the country about the course the war was taking, the ultimate responsibility

and the most important responsibility was that of the Supreme Court.

The Supreme Court, reviewing the episode long after Pearl Harbor, long after the Battle of Midway, when it was clear that the war was going to be won, did harm of the greatest and most momentous kind, and it is difficult to undo. The Dred Scott decision, comparable to the Japanese American decisions in error, was reversed by the three post-Civil War amendments to the Constitution. There's no way, however, that the amendatory process can undo this particular error of the Supreme Court.

What I suggest for your statute, which I warmly support, more warmly perhaps as an apology than as a reparations system, but I find reparations not inappropriate--I would suggest a change, if I may, Mr. Chairman, in section 101 of the bill before you.

I think that it is not enough for Congress to apologize for the grave injustice that has been done. I should call the section you have here section 101(a), and I should add to the third line--that is line 18 in the print I have in front of me--the word "unconstitutional" before the word "evacuation." Moreover, I should add this subsection as 101(b)--that is, after saying, "The Congress apologizes," I would have the Congress say, "The Congress therefore respectfully petitions the Supreme Court of the United States to take cognizance of the apology by Congress declared in section 101(a) above based on its findings in section 2, and particularly in section 2(a)(6), and to take the first appropriate opportunity to overrule the Japanese American cases as a violation of fundamental constitutional principles."

I think it is appropriate for Congress to petition the Supreme Court, respectfully in that way and to call attention to its action, without interfering with the Court's function, and I would have the report coming from this committee and from the House Judiciary Committee discuss the unconstitutionality of those decisions in a serious and sustained way as a violation of the provision about martial law, for failure to show military necessity, and as a bill of attainder, because I think the relocation was a bill of attainder, a legislative punishment.

...But I do think that the relocation of the Japanese Americans was a major injustice and an injustice which represents not hasty action in an emergency but on the part of the Supreme Court a violation of fundamental constitutional standards which, as Justice Jackson said at the time, lies around like a loaded gun in the hands of those who might wish to use it in the future.

So I think that our fundamental drive should be to eliminate these cases, and especially the *Korematsu* case, as precedents in our Supreme Court lexicon; they have no place there.

Mr. GLICKMAN. Thank you very much.

I first of all want to say, Mr. Rostow, I agree very much with your testimony. I think that if we focus too much on either the deceptive nature or the fraudulent nature of what information was provided to whom back in the 1940's, we lose sight of the more general and more universal problem which we're dealing with today, because we're dealing with a matter of equity today rather than a matter of law in terms of the type of legislation we're dealing with today, not that I want to demean that, I think it's important historical information, and it shows what can happen during a time of war, but I think that the broader picture is one that needs to be dealt with.

Let me ask this question. What is the current status of the *Korematsu* case? Is it still the law of the land?

Mr. ROSTOW. Well, I have published a little note saying that the case of *White v. Kohanamoka*, I think, the Hawaiian martial law case that came down shortly after the *Korematsu* case, overruled it in silence, and I think one could make a plausible case for the argument, but the point is that the Court didn't say so. I think if the court wanted an easy way out, it could take that. But on this subject there is nothing in the books that corresponds to Ex parte Milligan or Ex parte Garland as wonderful pillars of the constitutional pantheon and that is what we need.

Mr. GLICKMAN. But even if Congress were to put the word "unconstitutional" in front of the evacuation, or even if we were to pass a separate resolution, that of course doesn't deal with the base problem.

Mr. ROSTOW. No, sir. That would be a petition from the Congress to the Supreme Court and an expression of opinion by the Congress. Both Congress and the President have often taken independent positions on the constitutionality of issues and should feel absolutely free to do so. Interpreting the Constitution is not a monopoly of the Supreme Court, of course the Supreme Court has the last word; except for the amendatory process. But here the amendatory process cannot be used. The principle is already there.

Mr. GLICKMAN. Could any of the pending cases now--the *Hohri* case is the only pending case. Could that case, if it worked its way to the Supreme Court, be one where the Court could exercise some judgment on the issue?

Mr. ROSTOW. Any time is all right.

Remember, the Supreme Court took half a century to express its opinion about the Tenure of Office Act, which was passed immediately after the Civil War in order to keep Stanton in the War Department. It was that statute which led to the impeachment of Andrew Johnson. The Supreme Court didn't get around to declaring that the Tenure of Office Act was an unconstitutional interference with the President's power over his own Cabinet until

1927, I think it was. If the Court wants to find an occasion to overrule *Korematsu*, it can do so.

We would also amend Section 201, "Definitions", (1) line 15, page 6 by inserting the words "on the date of the enactment of this Act" between the words "ancestry" and "who".

This clarifies the meaning of the word "living" for purposes of defining "eligible individual", as suggested in the letter of the Department of Justice to the House Subcommittee in 1986 (page 1077, printed hearings on H.R. 442, Part 2, Serial No. 69, dated April 25, 1986.

Further, we would amend Section 205, "Restitution", (a)(1), page 9, line 20, by adding the phrase "within 9 months after the date of the enactment of this Act", between the comma after the word "locate" and before the comma preceeding the word "using".

This is language which is included in the Restitution proposal in H.R. 442 as introduced on April 10, 1987, to set a deadline for the Attorney General to complete his efforts to locate "eligible" individuals. Incidentally, we suggested some such deadline in our testimony in 1984.

May we commend Senator Matsunaga for adding the last sentence in this paragraph which should materially aid the Attorney General in his effort to locate "eligible" individuals.

We would also amend Section 205, "Restitution", on page 10, line 19, by adding a new paragraph (e) as follows "Payment Not To Affect Income or Eligibility For Benefits. Amounts paid to an eligible individual under this section shall not be included as income for purposes of the Internal Revenue Laws of the United States or for purposes of determining eligibility to receive benefits described in Section 3803(c)(2)(C) of Title 31, United States Code", and renumbering currently identified paragraph (e) as (f) and including all of the paragraph entitled "Extinguishment of Claims".

This provision was added to the 1987 language of H.R. 442 to make certain that the individual restitution payments would not be subject to taxes or to deprive those presently receiving federal funds for various health and related programs, such as medical, hospital, and retirement benefits. We were also the ones who urged that this proviso be added to redress legislation in testimony at the 1984 and 1986 hearings. This amendment was dictated because the Internal Revenue Service attempted to tax awards paid to evacuee claimants under the Evacuation Claims Act of 1948 until Republican Whip Thomas Kuchel of California threatened to introduce legislation to prohibit such collections, and because certain Issei feared that redress payments might be used to deprive them of certain medical, hospitalization, retirement, and other benefits authorized by national statutes for the aged and/or the needy.

7. **What Are Examples of "Public Educational Activities"?**

Summary: Two appropriate examples of Public Educational Activities authorized for the use of these funds would, in our judgment, be (1) the erection of a heroic memorial or statue to the Japanese American troops in World War II as an eternal reminder of what happened to us, how we dealt with evacuation, including in the armed forces, and what are some tangible results of our "Go For Broke" activities, and (2) fund on a continuing basis the National Museum of American History's bicentennial exhibit of the Japanese American Experience "A More Perfect Union: Japanese Americans and the Constitution of the United States.

Section 206, after establishing a Civil Liberties Public Education Fund Board of Directors, restricts disbursements from the Fund to only five authorized uses, among which is "(1) to sponsor research and public educational activities so that events surrounding the relocation and internment of United States citizens and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes of this and similar events may be illuminated and understood".

As we understand it, one of the major objectives of this research and educational project is to help assure that never again will another American minority population or individual be subjected to a repetition of such unconstitutional abuses.

Heroic Statue or Memorial to Go For Broke Spirit

Although it may seem presumptuous for us to propose such a self-serving project, the Go For Broke Nisei Veterans Association urges as a most appropriate educational project the funding and the establishment and maintenance of a heroic symbolic statue or memorial on the hallowed Avenue of Heroes, across the Potomac River from the Lincoln Memorial, leading to the National Cemetery at Arlington. It should be dedicated to those suspect Americans of Japanese ancestry who volunteered from behind the barbed wire fences of virtual prison camps after they and their families were arbitrarily removed from their lifetime homes and associations on the Pacific Coast, excluded , and many incarcerated. Though denied the opportunity to serve their country in war with their fellow citizens, they insisted on combat duties with the very Army which had declared them as a group disloyal and earned with their blood shed on every battlefield of that worldwide conflict praise as worthy Americans. Long after all of the evacuees and other beneficiaries of this measure have passed on, long after the memories of that 1942 mass military exercise have been erased, a unique and compelling reminder that every citizen is entitled to the presumption of loyalty and devotion should be on eternal display to keep the promise that "Americanism is a matter of the mind and the heart; Americanism never was, and never will be, a matter of race and ancestry". Over the centuries to come, there should be standing witness that what happened to us should never again be allowed to happen, and that constant vigilance and responsibility are vital to the preservation and perpetuation of liberty, freedom, equality, and opportunity in this country and throughout the world.

Wordy and not very eloquent as this description may be, I believe it conveys the essence of that "Go For Broke" spirit of the Issei and Nisei that we veterans would like to leave behind us as our testament and challenge to those Americans yet to be born, especially those who will have some percentage of Japanese blood in their veins.

Bicentennial Exhibit of Japanese American Experience

Another fitting educational project would be to fund the continuance and maintenance on a permanent basis of the exhibit of the Japanese American experience in this country, entitled "A More Perfect Union: Japanese Americans and the United States Constitution", which will be featured by the National Museum of American History of the Smithsonian Institution for its commemoration of the Bicentennial of the Constitution, Bill of Rights, and subsequent Amendments, beginning this October 1 (1987) and scheduled to be on display for some five years. This is not only the amazing and inspiring epic of an Asian immigrant group but also of the vicissitudes they endured and overcame over a century as it people struggled to earn a part of the American heritage for themselves and their posterity.

The exhibit in itself is an education to those who will see it. It should become a travelling exhibit to visit every part of the Nation after its current stand, before being returned to the National Museum, improved and expanded, for permanent showing. We cannot conceive of a more purely "educational" project than this, or a more historical saga of the dream and its meaning to minority Americans than this already planned exhibit to celebrate, to study, and to appraise the place that the Constitution has in the democratic system we proudly hail as American.

At the same time, it is noteworthy to remember that when the Constitution was drafted in 1787, as well as subsequently the Bill of Rights, the Founding Fathers were not aware of the possibilities that at some future time Asians, beginning with the Chinese and then by the Japanese, would emigrate to territories not then a part of the United States. Had they been, would the Japanese, for instance, been considered with the Negroes or blacks as slaves and property. It took a Civil War and three constitutional Amendments to recognize their status as free men, entitled to all the promises, privileges, and immunities of citizenship. Indeed, even after the XIV Amendment recognized Americans of Japanese ancestry born or naturalized as citizens of the United States, in precedent-setting Supreme Court decisions it was held that Japanese immigrants, because they were not contemplated by the Founding Fathers as being of the white race, were considered as something less than Caucasians. And several States, most notably those on the West

Coast, prohibited them from testifying against white persons, from serving on juries, from owning land for residential, commercial, and agricultural purposes, from eligibility for various professions, businesses, and occupations, etc. And there is little doubt that racism, anti-Japanism, and warmongering had a major role in the Government's mistreatment of the Japanese population in this country during World War II and the subsequent congressional and judicial approval of that military judgment and movement.

Somehow, to me at least, even the Smithsonian's remarkable and inspired exhibit leaves something to be desired in its exposition of how the Constitution was intended to function, and in fact did function, as it relates to those of Japanese ancestry before and during World War II and even thereafter. After all, the Constitution was originally drafted to govern a nation, and not necessarily to render justice to even its limited constituency. Slaves, native Indians, women, and debtors were not included as primary beneficiaries of this document, and there was a suspicion that the "common man" could not be entrusted fully with the franchise. It was not until the Bill of Rights was subsequently adopted that certain individual rights were enumerated and protected. It would be worth researching how an 18th century Constitution has, can, and does, cope with 20th century realities, especially as they relate to civil and human rights, including those of the Japanese and other Asians.

Committee Report Inclusion

Perhaps in the context of legislation, these twin proposals may not be proper as amendments to the basic thrust of the bill S. 1009. If that is the legislative situation, perhaps they can be included and reported favorably in the Committee Report as a principal recommendation and illustration of appropriate "educational" programs to be considered by the Fund's Board of Directors at a more opportune time.

The innumerable numbers and wide scope of the questions and answers that follow may be illustrative of the variety and types of information and education, as well as research, that is required to fulfill the mandate of S. 1009.

8. **Since Japan Started the Pacific War, Why Shouldn't Japan Provide Redress Compensation**?

Summary: Japan did not order our removal, exclusion, and in many cases detention. Our own Government of the United States did, even though we were, and are, citizens of this country; accordingly we cannot hold Japan responsible for the tragedy and travail we had to endure at the hands of our own Government.

As difficult as it may be to understand, one of the most often asked questions is why we Americans of Japanese origin do not demand compensation for our World War II experiences from Japan.

This question indicates that they are not acquainted with the legal and other implications. It ignores a number of realities, such as that we Americans of Japanese ancestry are not citizens or nationals of Japan, that we are not dual citizens owing allegiance to both the United States and Japan, that we are native born citizens of the United States by definition of the Constitution and by our tested loyalty as Americans in both peace and war, that we have never professed interest in being citizens of Japan though we readily admit our ancestry, appreciation of its culture, history, and contributions to the Japan-United States alliance and partnership, etc.

As individuals and as a group, we had nothing to do with Japan's infamous attack on Pearl Harbor, or on the atrocities its soldiers committed against their enemies and especially against American GIs in the Pacific and Asia Theaters of Operations, etc. Indeed, we of Japanese origin in the United States probably have more to dislike and even to hate the Japanese enemy than most other Americans, for it was what and how they did it that started the chain of reactions, or excuses, that led up to the evacuation movements with all its tragic consequences and implications for us.

We, United States citizens and our alien resident parents who could not become citizens by naturalization under federal law, unlike German and Italian immigrants, and other European nationals, could and did, were no more responsible for the actions and activities of the Imperial Japanese Forces than such German Americans as the late President and General of the Armies Dwight D. Eisenhower and his several brothers, including Milton, his younger brother who served in many government capacities, including as the first Director of the War Relocation Authority, and as President of several outstanding colleges and universities, such as Johns Hopkins, or the automotive genius and industrialist, first generation American born to Italian immigrants Lee Iacocca and New York Governor Mario Cuamo, another first generation American also born to immigrants from Italy, had to do with the war strategies of Germany's Adolph Hitler and Italy's Benito Mussolini and the genocidal Holocaust of the Nazis. I would be so bold as to respectfully suggest that the Eisenhowers and the Cuamos and Iacoccas knew and know more about their respective ancestral homelands than do most of us American Japanese about Japan as the country of our ancestors.

It should never be forgotten that it was our own Government, that of the United States and the United States alone, which questioned our basic loyalty, found it wanting, and evicted and imprisoned us. Japan's "surprise" attack and subsequent actions provided the excuse but the determinations and decisions as to our mistreatment were those of our own Government, and our Government's alone. So, there is no legal, moral, or other obligation on the part of Japan to bear any responsibility for our World War II travails or for the payments of any redress or other compensation.

9. **Why Should Only Japanese Americans Be Compensated, When All Americans Suffered In World War II, Including Many Who Died?**

Summary: In addition to sharing the common lot and life of all Americans in World War II, we of Japanese ethnicity were the only ones forced to suffer on account of our race,and race alone, the special consequences of that racist military judgment.

Of the many questions raised in opposing this legislation, this is one of the most often asked and probably among the more legitimate ones for those not aware of the true character of the wartime deprivations and denials endured by Japanese Americans in this country.

Officially, the Congress answered that challenge as early as 1947 and 1948 when it considered and then approved what has become known as the Japanese American Evacuation Claims Act of 1948. Both the House and Senate Judiciary Committees in almost identical reports declared in the same language that "The Committee considered the argument that the victims of the relocation were no more casualties of the war than millions of other Americans who lost their lives or their homes and occupations during the war. However, this argument was not considered tenable, since in the instant case the loss was inflicted upon a special racial group by a voluntary act of the Government without precedent in the history of this country...and to redress them would be simple justice".

Then President Harry Truman, in addressing himself on this same Evacuation Claims matter early in 1948 to the Senate Judiciary Committee, repeated generally what he had written a year earlier to the House Judiciary Committee, stating clearly that "...An overwhelming majority of our Japanese American population has proved itself loyal and patriotic in every sense. Those of them, and they were many, who entered the armed services acquitted themselves with great distinction. It would be, in my opinion, a tragic anomaly if the United States were, on one hand, to acclaim and decorate with honors the brave Nisei troops who fought so valiantly and at such sacrifice, while, on the other hand, it ignores and left unredressed the very real and grievous losses which some of them, together with their immediate families, have suffered as a result of Government action in the midst of that same war."

In testimony already cited urging a petition as part of the National Apology to the Supreme Court to review and reverse the so-called evacuation test cases, constitution law expert Eugene Rostow, beginning on page 231, of the printed 1986 Hearings, made clear the distinction between the Japanese American experience and "simply one of the many forms of suffering that occurred during the war. This was a special form of suffering based only on race, and therefore it should be distinguished from all other accidents of war and disasters and tragedies of war. I think it is right to distinguish it and to undertake special forms of redress, because this experience, which was so difficult for American citizens of Japanese ancestry...is now part of our law, part of our constitutional fabric. In the long run, we should concern ourselves not simply with redressing the injustice to individuals caused by the program, but on the fact that the precedent is embodied in our law..."

Moreover, in an official Department of Justice letter addressed to the Chairman of the House Judiciary Committee and reported in the printed hearings on H.R. 442 for 1986, beginning on page 1070, Assistant Attorney General John Bolton of the Office of Legislative and Governmental Affairs, wrote "The United States Government has officially recognized that much unjustified personal hardship came about as a result of the internment program...we all can agree that Japanese Americans suffered much deprivation and hardship. They were expected to make personal, professional, and social sacrifices of a nature not expected of other United States citizens..."

In oral testimony on April 29, 1987, again on companion bill H.R. 442, Assistant Attorney General Richard K. Willard of the Civil Division of the Department of Justice, more or less repeated the arguments and statements in the letter a year earlier to Chairman Peter Rodino by his colleague, Assistant Attorney General John Bolton, reported above.

Some ten days earlier, on April 20, 1987, Solicitor General Charles Fried, in arguing the Government's case in the so-called Hohri Class Action suit for monetary judicial redress, before the Justices of the Supreme Court of the United States quickly conceded that the 1942 mass military movement was "frankly racist and deplorable" which was "our greatest departure from the values for which we were fighting". He confessed too that the Government's decisions were "political decisions made at the highest levels of Government and were based on race", admitting that "Everyone knew what was going on" and that "These wrong (racial) bases were spread out all over the record, the briefs of the Supreme Court", etc. Frankly, in all the years that I have heard Justice Department and other Government officials speak of their participation in the arbitrary decisions against those of Japanese ethnicity, none spoke in such confessional language of race, bigotry, and mistaken error and judgments, including that of constitutional abuse.

Personal Testimony

Add to these formal and official distinctions our personal ones. We Japanese American war veterans and others of similar ancestry were willing, and did, share in the World War II sufferings of most Americans and their families. We were willing to be inducted into the armed forces by Selective Service. We were willing to accept employment in usually higher paying defense industries and activities. We were willing to accept rationing of food, clothing, gasoline, and other essentials and to go without the luxuries and comforts of peacetime. We were willing to delay our education and those of our children, if and when necessary or helpful to the common cause. Make no mistake about it; as American citizens we were more than willing to share the common lot and life of all citizens and contribute what we could to winning victory over the Imperial Forces of Japan and the Nazi Armies of Germany.

But, we were called on to accept far more than our share of wartime sacrifices, and all simply and clearly on the basis of race and race alone, though we did not recognize the reason as racial at the time because of the exigencies and demands of those days.

We were ordered to leave our homes and associations and to voluntarily seek refuge on our own outside the "prohibited" zones. Then, abruptly, we were told that we had to remain where we were. Next, we were directed to leave for temporary "assembly centers" because we were by then in an "exclusion" area in which none of our ancestry could remain. We had to rid ourselves of most of our property, sometimes in less than a week, because we could take to "camp" only that which we could carry personally, for the Government failed to provide adequate storage facilities in time even though the Army had promised minimum custodial space. We had to purchase on our own clothes and other wear for camps we knew not where, or for how long, and under unknown conditions and circumstances.

If we wanted to volunteer for military service if qualified, Selective Service would no longer accept us, so we had to persuade the Army that had earlier placed us in these virtual prisons to accept us as volunteers, not for any service or selected duty, but for battle on the front lines in Europe in a segregated infantry combat team that could easily become "suicide troops". Or, if any spoke Japanese with any fluency, to volunteer for military intelligence against the Japanese enemy, facing "the double jeopardy" of possibly being shot by American troops by mistake for "looking like the enemy" and/or being taken prisoner by enemy Japanese troops.

Meanwhile, most of our families would be forced to live under unconstitutional restraints and under conditions less favorable and comfortable than those extended to actual prisoners of war who were protected by the Geneva Convention as to food, clothing, recreational, environmental, and other circumstances.

Such were some of the many differences between our forced treatment and most other Americans. And what other citizens, individuals or as a group, would trade their quality of life and circumstances and destiny with us for the paltry solatium in individual compensation that is being offered us as redress? Believe me, we would gladly have exchanged our lot in life with almost any other American who was free to live as he wanted where he choose, work in the employment, business, or profession of his own selection, etc. And, even to accept military duty in the service of our choice or determined by Selective Service and in that capacity which we desired. It would be an easy trade and choice we would make. Only when considered and compared in terms of exchanging places with us can one begin to appreciate just how small and miniscule that proposed individual compensation is for being incarcerated for as much as four years under the worst of shameful conditions.

10. Why Is Monetary Compensation Justified When the Supreme Court Determined That the Evacuation Was Constitutional?

Summary: Although the Supreme Court did find evacuation to be a constitutional exercise of the war powers, there is nothing to indicate that the Congress does not have the authority in its wisdom to enact corrective and remedial legislation to provide redress to the victims of evacuation; moreover, there is currently pending in the court system cases aimed to give the Supreme Court an opportunity to reverse its wartime decisions.

While it is correct to state that the Supreme Court of the United States in the so-called evacuation test cases (Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu) ruled that the wartime curfew, travel restrictions, and exclusion were constitutional exercises of the war powers "as of the time they were applied", it is far from accurate to conclude thereby that these judgments held that monetary redress to those aggrieved are not justified, illegal, or misguided. In the Mitsuye Endo case, moreover, the same High Court ruled unanimously that the detention of loyal citizens was clearly unconstitutional.

While the Nation's highest tribunal determined during the period of hostilities that certain actions taken by the military were not improper, which indicates that there is no legal obligation on the part of the Government to provide monetary reimbursements to the victims, there is nothing in these judicial findings that prevents the Legislature in its wisdom and discretion to authorize redress solatiums and restitutions to those who were deprived of their constitutional rights under the Bill of Rights and the XIV Amendment. In fact, in the pending Hohri class action judicial redress case, the Federal District Court Judge emphasized that it was up to the Congress, and not to the Judiciary, to determine the public policy concerning such claims and/or redress.

An examination of S. 1009 shows that it carefully avoids mention of the judicial conclusions in the evacuation cases, in order not to challenge the prerogatives of the Judiciary and the doctrine of the separation of powers through checks and balances. We, however, without confronting the courts directly, would have the Legislative Branch "respectfully petition" the court of Last Resort to review and reverse these now discredited wartime decisions, in addition to extending a national apology and providing token payments for individual and collective wrongs inflicted upon this single minority population on the basis of race and race alone.

Summed up, it is our contention that, while the Supreme Court has rendered its opinions on the constitutionality of Executive Order 9066 and related directives, there is nothing in the law and its precedents to prohibit and prevent Congress from acting generously on this subject matter as one of justice, equity, and grace calling for the legitimate redress of these real grievances against certain governmental repression. Indeed, history records, as we shall subsequently demonstrate in another section, that is traditional and approved public policy to correct such abuses, though technically and legally constitutional, by remedial efforts such as S. 1009 is.

Though these court cases, which are now largely discredited and discounted and considered as the most infamous in the area of human and civil rights since the historic Dred Scott opinion which held that even free black persons could not be American citizens 130 years ago (1857) and precipitated the Civil War Between the States, we cannot simply confine them to the ash cans of history and ignore them for they continue to have certain force and effect.

Justice Jackson,strongly dissenting in the Korematsu case outlines well the continuing dangers in these wartime test cases.

> "...A military order, however unconstitutional, is not apt to last longer than the military emergency. Even during that period a succeeding commander may revoke it all. But once a judicial opinion rationalizes such an order to show it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure...The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. All who observe the work of courts are familiar with what Judge Cardoza described as 'the tendency of a principle to expand itself to the limit of its logic'. A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image. Nothing better illustrates this danger than does the Court's opinion in this case.

Evacuation Test Cases

In any event, on December 18, 1944, by a six to three majority, the Supreme Court decided that the forced military removal of those of Japanese ethnicity from designated West Coast areas was constitutional "as of the time and circumstances" it was carried out. Fred Korematsu, an Oakland, California, welder in a defense plant who had had his face altered by plastic surgery, was found guilty of the crime of refusing to report to a Wartime Civilian Control Administration assembly center at a horse racetrack to be exiled from his home on orders of the Western Defense Command.

That same day, in an equally important but less publicized case, in a unanimous decision of the nine justices, Mitsuye Endo of Sacramento, California, a discharged state civil service employee, was found not guilty of any crime since her arbitrary detention was ruled unconstitutional. She first challenged the validity of a state order discharging her from her employment. This was changed to a habeas corpus proceeding after she had to report to a WCCA assembly camp in the nearby fairgrounds.

Some 18 months earlier, on June 12, 1943, in the companion cases involving Minoru Yasui of Portland, Oregon, an attorney at law who had earlier been employed by the Japanese Consulate General in Chicago, and Gordon Hirabayashi, a Quaker student at the University of Washington in Seattle, were found guilty of violating the curfew and travel restrictions imposed by the Western Defense Command as a prelude to the evacuation movement, both restrictions being found to be constitutional.

The latest, most definitive, and revealing documentary relating to the handling of these four test cases was published in 1983 by the Oxford University Press. Its author, Professor Peter Irons, now a Professor of Political Science at the University of California, San Diego, a graduate of the Harvard Law School and the recipient of a Ph.D. from Boston University, researched and wrote this devastating expose of the machinations of the attorneys for both the War Department and the Justice Department, as well as of the justices themselves, to achieve their respective objectives.

We respectfully commend this legal volume "Justice At War" as "must-reading" to the members of this Committee, its staff, and all members of the Congress who are interested not only in the fair and just administration of the law but also in the ways Government attorneys deliberately manipulated evidence to mislead the country's Court of Last Resort.

"Justice At War" Revelations

Professor Irons contends that the Department of Justice knowingly submitted inaccurate records to the Court in these cases. Among these records was a key military document (General John DeWitt's "Final Report" on the 1942 Evacuation) which, as government lawyers admitted among themselves, contained "lies", "innuendos", and intentional falsehoods", thereby contributing to "a legal scandal without precedent in history".

This book develops the fascinating struggle that pits Justice Department attorney Edward Ennis against Assistant Secretary of War John McCloy.

Under the Freedom of Information Act, Professor Irons unearthed a set of Justice Department papers dealing with the "Final Report" of General DeWitt. The files also revealed that debates erupted in the Department over the factual accuracy of the DeWitt Report. Ennis and his assistant John Burling expressed doubts about the General's claims that Japanese Americans had committed acts of espionage. Both the FBI and the Federal Communications Commission found these claims to be baseless.

Frustrated in their effort to delete the document from the Government's brief to the Supreme Court to alert the Justices to the falsity of the DeWitt Report, they were able to insert a crucial footnote in the brief referring to the "contrary of evidence" on the espionage allegations, hoping that it would cause the Justices to make their own inquiries. John McCloy, the author notes, intervened with Solicitor General Charles Fahy and persuaded him to remove the critical footnote so that this point would be missed by a Court not eager to find fault with the Army's position.

The author further reports that military_files "disclose the alteration and destruction by War Department officials of crucial evidence in these cases". Professor Irons charges that "rather than expose to the Court the contradictions between this evidence and claims made by Justice Department lawyers, military officials literally consigned the offending documents to a bonfire."

In other chapters, the efforts of Chief Justice Harlan Stone to persuade his colleagues to agree on a unanimous opinion in the Hirabayashi (Yasui's case was consolidated with that of Hirabayashi because most of the issues were identical) matter are exposed, as well as the various pressures applied in the decisive Korematsu case to gain the six to three majority that it did.

There are several suggestions that that three margin majority could have been reversed under certain circumstances, with the Army's programs being determined as being unconstitutional by a five to four, six to three, or even seven to two counts. There are also suggestions that the Korematsu and Endo decisions, which could have been issued before the Court adjourned for the summer in 1944, were not made public until mid-December for political and legal reasons.

It can be speculated, from all that is revealed in this "shocking and surprising" Oxford University Press publication that if the Endo case had been "handled" in a more expeditious manner by government attorneys and the courts, and had been adjudicated by the highest tribunal before the other cases, rather than being deliberately delayed for one reason or another, the entire eviction and imprisonment provisions might well have been declared null and void, an unconstitutional exercise of the war powers.

While the Korematsu, Yasui, and Hirabayashi cases involved crimes, (refusal to honor Army's orders), Endo was an habeas corpus question. Had the Endo decision been rendered before Korematsu, for instance, it could have forced open the gates of the prison camps, at least forced drastic changes in the WRA's leave clearance regulations. Had it been rendered before Hirabayashi, the whole arbitrary mass movement may have been quashed before it could start.

Incidentally, for purposes of historical accuracy, JACL was not opposed to litigation as a means of determining the legality of the Army orders. It could not, however, because of its public stance for "cooperative collaboration" with the military in the evacuation, endorse such challenges. The truth is, as Professor Irons points out, that at about the time that Yasui and Hirabayashi were committing crimes by violating the curfew and travel restrictions, Saburo Kido, then National JACL President, was persuading his friend, San Francisco attorney James Purcell, to instigate a traditional habeas corpus proceeding. Irishman Purcell responded by instituting the so-called Endo challenge, the only one of the test cases to be successfully contested in the Supreme Court.

Of additional interest may be that the JACL submitted "amicus" (friend of the court) briefs in all of the cases before the Supreme Court. The late Roger Baldwin, legendary founder and long-time director of the American Civil Liberties Union, described them "as among the best I've ever read", especially that in the Korematsu issue, which appropriately enough was titled "The Case For The Nisei".

The JACL briefs were in the tradition of the "Brandies" appeals, treating with anthropological studies and the most recent accounts of the cultural assimilation of Japanese Americans, demonstrating that in their efforts at assimilation, they followed the historic paths taken by Greeks, Italians, Germans, Irishmen, and other immigrant groups.

It also took General DeWitt to task for his blatant racism, charging that the General had no "reasonable" basis for the military order, and, therefore, had no constitutional sanction.

It was also a point-by-point refutation of each of the major "arguments" made, first by then California Attorney General Earl Warren in his testimony to the so-called Tolan Committee (Select Committee Investigating National Defense Migration) in the spring of 1942, and secondly by DeWitt's "Final Report" of 1943, which, in actuality, according to Professor irons in his book "Justice At War: The Story of the Japanese American Internment Cases", was a revised and delayed copy of the original that had first been forwarded to the war Department several months earlier and had been deliberately concealed from Justice Department attorneys.

Coram Nobis and Class Action Suits

Regardless, ever since the end of hostilities in the summer of 1945, JACL has tried to find appropriate lawsuits in which to present the Supreme Court with another opportunity to reverse_its Korematsu conclusions. It asked many of the outstanding constitutional authorities about the possibility, even requesting a Professor of Boalt School of Law at the University of California, Berkeley, to have his class study this question. All were unanimous in their judgments that no such opportunity existed. Even as late as 1972, Joe Rauh, Jr., counsel to the National Leadership Conference on Civil Rights, in addressing a biennial national Convention of the JACL here in Washington, D.C. concluded that the only recourse was remedial legislation.

We Nisei war Veterans, then, welcomed the so-called "class action" and "coram nobis" suits that were filed in 1983, based upon the latest information and attitudes towards such legal actions that have become more popular since the Vietnam era of questioning establishment and government initiatives.

Both complaints were based upon the disclosure recently of much new information as discovered by the Commission on Wartime Relocation and Internment of Civilians and others, such as that revealed in Professor Irons' book, which indicate that the Government suppressed material evidence, provided misleading facts, and indulged in questionable acts in its relations particularly to the Supreme Court. Resort to the Freedom of Information Act was freely cited.

William Hohri, and 12 other evacuees, in March 1983, on behalf of the National Council for Japanese American Redress and all 120,000 American citizens and resident alien Japanese,filed suit in the United States District Court for the District of Columbia, for a total of some $24 billion for "Monetary and Declaratory Relief for Violation of Plaintiffs' Constitutional Rights of Due Process, Equal Protection, Just Compensation, Petition, Privacy, Travel, Freedom from Unreasonable Search and Seizure, Freedom from Cruel and Unusual Punishment, and Civil, Statutory, and Common Law Rights".

They charge that, "solely because of their Japanese ancestry", they "were subjected to forcible segregation, arrest, exclusion, imprisonment, and other deprivations of their most fundamental constitutional rights during World War II by defendant, the United States of America".

For the first time, instead of using Caucasian attorneys, Fred Korematsu, Minoru Yasui, and Gordon Hirabayashi were represented as lead attorneys by Sansei counsel. Their respective cases were filed later in 1983 in San Francisco, Portland, and Seattle. The attorneys for the Nisei evacuee petitioners were generally agreed that the facts and conclusions set forth in the lead Korematsu complaint would be applicable to their individual suits. Professor Irons is identified as of counsel in these cases,serving pro bono.

The table of contents in the Korematsu compliant sets forth six major arguments: (I) Relief by writ of error coram nobis is available to correct fundamental errors which deprived petitioners of due process rights under the United States Constitution; (II) The Government's failure to adhere to established standards of professional conduct violated petitioners' due process rights; (III) The prosecution's use of false evidence and the suppression of evidence in the Hirabayashi, Yasui, and Korematsu cases constituted a denial of due process requiring vacating petitioners' convictions; (IV) the prosecution's bad faith in intentionally destroying evidence material to the petition of the due process clause of the United States Constitution; (V) the pattern and practice of generalized misconduct by the Government constituted a fraud upon the Court, resulting in further deprivation of petitioners' due process rights; and (VI) the cumulative effect of all the acts of governmental misconduct operated to deny petitioner' due process rights to a fair trial and appeal."

In the "class action" suit, on May 17, 1984, Federal District Judge Ben Oberdorfer dismissed the case, holding that the six-year statute of limitations precluded the filing of a civil claim against the United States Government. At the same time, he did not dispute the arguments against internment itself, saying that "the rationale of military necessity now appears questionable". He also rejected the claim that the 1948 Evacuation Claims Act was the exclusive means by which evacuees could seek monetary relief, stressing that "The Act does not bar this court from jurisdiction over all of plaintiffs' claims". He suggested, too, that the evacuee, should seek compensation from Congress, noting that "The careful spade work which plaintiffs have done in the prosecution of their claim in court should contribute to making their argument to Congress more persuasive. And it may be that Congress will focus more closely on these claims once plaintiffs have exhausted their possible judicial remedies."

Late in January 1986, in a two-to-one judgment of a three judge panel of the United States Court of Appeals for the District of Columbia, on appeal by the evacuees, the District Court was reversed and it was held that the statute of limitations had not tolled to prevent a hearing on the class action suit. Next, on appeal by the Department of Justice, the full Court of Appeals, by a six-to-five margin, upheld its three judge panel. On further appeal, again by the Government, earlier this month (June 1, 1987), the Supreme Court decided on an eight-to-zero vote, with one justice abstaining because as a member of the Appeals Court he had participated in the case before his nomination to the High Court, that the Court of Appeals which had considered the earlier appeal had no jurisdiction to do so. The highest tribunal in the land remanded the case to the United States Court of Appeals for the Federal Circuit, which had been created in 1983 to handle appeals on matters relating to damage claims against the Federal Government. So, this class action suit is back on square two, an appeal from the Lower Court's ruling as to the validity of the statute of limitations on the right to file claims for damages for wartime denials of due process, etc., to the Court of Appeals for the Federal Circuit. This legalistic technical interpretation means further delay in seeking a determination on the merits of the basic case.

In the trio of "coram nobis" appeals that is those of Fred Korematsu, Minoru Yasui, and Gordon Hirabayashi, three different results developed out of the Government's requests that the convictions in these suits be vacated.

Korematsu Coram Nobis Plea

In the Korematsu issue, Federal District Court Judge Marilyn Patel of San Francisco, in the fall of 1983, approved the Government's motion and vacated the conviction. However, in spite of the opposition of Government attorneys, Judge Patel declared that the World War II evacuation of 110,000 Issei and Nisei was unjustified and unconstitutional. She accepted the findings and conclusions of the Commission on Wartime Relocation and Internment of Civilians that there was no military necessity for the curfew, exclusion, and internment, all being based on racism. She called the Government's response "meek" and a "tantamount to a confession of error". United States Attorney Victor Stone urged the court to "put behind us" the controversy over the conviction and internment because the "courts of history had already vindicated the Japanese Americans."

In rejecting the request to simply vacate the conviction without addressing the illegality of Government actions at that time, Judge Patel emphasized that the Supreme Court ruling is a warning to all that "our institutions must be all the more vigilant to protect constitutional guarantees" in times of war, military necessity, or national security.

In a 28-page written opinion, dated April 19, 1984, Judge Patel expands on her oral statement from the bench. Noting that the court could not rectify the Supreme Court record concerning the suppression and distortion of evidence, she declared nevertheless that "the court is not powerless to correct its own record where a fraud has been worked upon it or where manifest injustice has been done."

Even if the Government were in a position to move to dismiss, the "court would not automatically grant dismissal. A limited review by the Court is necessary even where the defendant consents. The purpose of this limited review is to protect against prosecutorial impropriety or harassment of the defendant and to assure that the public interest is not deserved."

In her Conclusion, Judge Patel wrote (with court citations eliminated by the layman writer to conserve space):

> ...At oral argument the Government acknowledged the exceptional circumstances involved and the injustices suffered by petitioner and other Japanese Americans...Moreover, there is substantial support in the

> record that the Government deliberately omitted relevant information and provided misleading information in papers before the (Supreme) Court. The information was critical to the Court's determination, although it cannot now be said what result would have been obtained had the information been disclosed. Because the information was of the kind peculiarly within the Governments knowledge, the Court was dependent upon the Government to provide a full and accurate account. Failure to do so presents the "compelling circumstances" contemplated by Morgan (a previously cited case). The judicial process is seriously impaired when the Government's law enforcement officers violated their ethical obligations to the Court.
>
> This court's decision today does not reach any errors of law suggested by petitioner. At common law, the writ of *coram nobis* was used to correct errors of fact. It was not used to correct legal efforts and this court has no power, nor does it attempt, to correct any such errors.
>
> Thus, the Supreme Court's decision stands as the law of this case and for whatever precedential value it may still have. Justices of that Court and legal scholars have commented that the decision is an anachronism in upholding racial discrimination as "compellingly justified". "Only two of this Court's modern cases have held the use of racial classification to be constitutional." The Government acknowledged its concurrence with the Commission's observation that "today the decision in Korematsu lies overruled in the court of history." *Korematsu* remains on the pages of our legal and political history. As a legal precedent it is now recognized as having very limited application. As historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive, and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.

It is our understanding that, as of this date, the Government has not appealed Judge Patel's decision, since she did not make any findings of fact with which the Department of Justice could quarrel. Korematsu's legal team, though, is seeking ways to appeal to the Ninth Circuit in order that the basic merits of the principles involved may be considered by the Appeals Court for the western states.

In Min Yasui's case, heard on January 26, 1984, Federal District Court Judge Richard Belloni of Portland, Oregon, who reviewed Yasui's petition for coram nobis, granted the Government's motion to vacate the conviction. That was all he allowed as he presumably approved the Government's contention that no findings of fact were relevant or necessary.

Yasui's untimely death earlier this year, caused in large part by his personal dedication to this whole subject matter of redress while he was the victim of irreversible heart illnesses, made his case "moot", though we understand that his family and his attorneys are trying to devise some acceptable theory to secure a decision on the constitutionality of his wartime conviction on its merits.

Hirabayashi Appeal

In Gordon Hirabayashi's proceedings, heard on May 18, 1984, by Federal District Judge Donald Voorhees of Seattle, Washington, a position somewhat between those taken in the Korematsu and Yasui issues developed. The Seattle jurist ruled that Hirabayashi should be given his day in court as he ordered an evidentiary hearing on his petition for a writ of coram nobis. Similar to a trial, after the hearings the judge announced that he would act on the coram nobis petition. The Judge cautioned that Japanese Americans may still lose the case, even though knowledgeable persons recognize that a great wrong was committed, simply because of the nature of the legal system and the manner in which issues are adjudicated.

United States Attorney Victor Stone, who argued all three of the coram nobis cases, repeated the Government's concession that the evacuation program "was an unfortunate episode". After noting that Executive Order 9066 had been rescinded by President Gerald Ford and Public Law 503, which provided criminal penalties for violating the Executive Order, had been repealed by the Congress, Stone declared that the Government had no interest in reprosecuting the case. He explained that the Government wished to see Hirabayashi's conviction vacated, but wanted Hirabayashi's petition dismissed as well.

Stone introduced several new arguments to those he first raised with Judge Patel in San Francisco. Among those were that there are no legal consequences from the original conviction that a ruling can redress; that the judiciary may undertake only a "live case or controversy"; that Congress was the appropriate branch of Government to consider "redressing" past grievances; that no new critical documents had been produced; and that too much time had passed to reargue the case.

In a 35-page memorandum following the evidentiary hearing issued on February 10, 1986, Judge Voorhees reversed the 1943 Hirabayashi conviction and charged the Government with misconduct and concealing fundamental evidence. In a straightforward, nonlegalese recital of what took place and its critical importance to both the Supreme Court and Hirabayashi and others of Japanese origin, Judge Voorhees had this to say about the Government's misconduct in his opinion:

> The requirements that the error of which the petitioner complains be of the most fundamental character and that, absent the error, it is probable that a different result would have occurred will be considered together.
>
> The error of which petitioner complains is that, during the pendency of his appeal before the Supreme Court, neither he nor his counsel was informed by the government of the reason given by General DeWitt in the original version of his Final Report for the exclusion of all persons of Japanese ancestry from the West Coast. That statement was in essence that the military necessity, requiring the exclusion, was the impossibility of separating the loyal persons from the disloyal ones no matter how much time was devoted to that task.
>
> It was General DeWitt who made the decision that military necessity required the exclusion of all persons of Japanese ancestry from the West Coast. The central issue before the Supreme Court in the appeal of petitioner from his conviction on the first count was whether exclusion was in fact required by military necessity. Nothing would have been more important to petitioner's counsel than to know just why it was that General DeWitt made the decision that he did. The attorneys from the Justice Department assumed, and argued to the Supreme Court, that it was the need for prompt action that made the exclusion a military necessity. The statements by General DeWitt is his Final Report belied that assumption. His statement was that it was not time that made the exclusion necessary but rather the impossibility of determining whether any particular individual was or was not loyal.
>
> The disclosure of that information to petitioner's counsel and to the Supreme Court would have made it most difficult for the government to argue, as it did, that the lack of time made exclusion a military necessity. At the hearing on petitioner's petition Edward Ennis, who was in charge of the preparation of the brief for the government, testified that the whole thrust of the government's argument before the Supreme Court was that there was not sufficient time to make a differentiation between the loyal Japanese and those who might be disloyal. When asked what he would have done had he learned in March or April, 1943, of General DeWitt's statement, he answered that it would have been "very dangerous" to take that position before the Supreme Court.
>
> Had the statement of General DeWitt been disclosed to petitioner's counsel, they would have been in a position to argue that, contrary to General DeWitt's belief, there was in fact means of separating those who were loyal from those who were not; that the legal system had developed through the years means whereby factual ques-

> tions of the most complex nature could be answered with a high degree of reliability. Counsel for petitioner could have pointed out that with very little effort the determination could have been made that tens of thousands of native-born Japanese Americans--infants in arms, children of high school age or younger, housewives, the infirm and elderly--were loyal and posed no possible threat to this country. More time might have been required to consider the loyalty of those who had spent their adult lives in truck gardening or farming or fishing, but a great number of those, too, could have been rather quickly found to be loyal and of no possible threat.
>
> Had counsel for petitioner known and been able to present to the Supreme Court the reason stated by General DeWitt for the evacuation of all Japanese, it is this Court's opinion that the Supreme Court would have felt impelled to consider and to rule upon petitioner's appeal from his conviction upon the curfew count. If the asserted ground was known by the Supreme Court to be the impossibility of separating the loyal from the disloyal, the Supreme Court would have found itself in an area of inquiry where its collective wisdom and its collective experience were far greater than that of General DeWitt. The justices of the Supreme Court were intimately familiar with the process of factual determinations. If the military necessity for exclusion was the impossibility of separating the loyal from the disloyal, the Supreme Court would not have had to defer to military judgment because this particular problem, separating the loyal from the disloyal, was one calling for judicial, rather than military, judgment.
>
> The Court finds that the failure of the government to disclose to petitioner, to petitioner's counsel, and to the Supreme Court the reason stated by General DeWitt for his deciding that military necessity required the exclusion of all those of Japanese ancestry from the West coast was an error of the most fundamental character and that petitioner was in fact very seriously prejudiced by that non-disclosure in his appeal from his conviction of failing to report. In consequence, petitioner's conviction on the failure to report count must be vacated.

Since this was the first ever evidentiary hearing on the merits of the reasons, given and assumed, for the evacuation decisions, we have quoted at considerable length the Judge's comments. During the original hearings during wartime, the Justices accepted as gospel the Army's arguments without question. The Seattle hearings were on the fundamental issues involved not only in hindsight but also as they were presented in the first instances. This may well be the case that will be heard by the Supreme Court in due course and one that may not allow the highest court in the land to dodge the principles involved and decide to reverse on the merits the evacuation holdings.

While vacating Hirabayashi's conviction for refusing to report for evacuation, on the lesser conviction for failing to obey the curfew orders preparatory to the Army's evacuation movement strangely the judge held otherwise, noting that "even though the curfew was burdensome with respect to native-born Japanese since it lumped them with alien German, alien Italian, and alien Japanese the burden was relatively mild when contrasted with the harshness of the exclusion order."

On appeal, a special three judge panel of two men and one woman of the Ninth Circuit Court of Appeals heard oral arguments on March 2, 1987. To date, there has been no ruling, though one is anticipated momentarily. Hirabayashi's attorney argued that the curfew conviction should also be vacated on the same grounds of withholding information and misconduct on the part of the Government. The Department of Justice continued to argue that the statute of limitations had run out and it was too late to initiate a law challenge so long after the convictions complained of had been served.

In the April 1986 Department of Justice letter relative to the companion bill H.R. 442 in the House, the Assistant Attorney General commented on the "extensive litigation in recent years" involving the three separate coram nobis cases which were filed in 1983 and explained that then Attorney General Smith "determined that 'it is time to put behind us this controversy and instead reaffirm the inherent right of each person to be treated as an individual'. Accordingly, the Attorney General decided that 'it is singularly appropriate to vacate (Korematsu's) conviction for nonviolent civil disobedience', as well as to do the same for other similarly situated individuals who request it. Thus, in each of these cases, the United States, while disputing the petitioner's allegations, moved to vacate the conviction and to dismiss the underlying indictment or information, thus moving effectively to afford petitioners the very relief they sought."

While we are pleased that the criminal convictions have been vacated and the petitioners vindicated in their individual legal positions, as a group we recognize another maneuver by which the Justice Department seeks to avoid a Supreme Court test on the merits of the 1942 constitutional issues. Its many representatives have publicly confessed to the racism involved, including by the Solicitor General to the Supreme Court as recently as early this spring, nevertheless it refuses to cooperate in a legal determination that will once and for all time declare that the World War II test cases should be reversed and all of the evacuation issues declared unconstitutional and void. In the same inconsistent manner, the Department refuses to endorse or approve of this redress effort, though it still insists that racism was the principal factor in justifying evacuation.

11. **Wasn't the 1948 Evacuation Claims Act Redress**?

Summary: The 1948 Japanese American Evacuation Claims Act was, as its own identification implies, simply a claims program for real or property losses suffered by the evacuees; it was not in fact a redress effort since it was restricted in its authority to only monetary claims for specific items lost or damaged in that wartime excess.

Redress Means More Than Claims Payments

We Go For Broke Nisei Veterans are calling for the redress of all our grievances growing out of our World War II travail as Americans of Japanese ancestry. The instant bill, S. 1009, attempts to provide what its sponsors believe to be realistic and approvable redress. We are willing to accept this legislation as probably the "best" and "most generous" that this Congress will enact and the President sign into law.

The Japanese American (or American Japanese, as the Department of Justice chooses to identify it) Evacuation Claims Act of 1948 is not redress legislation, and it was never intended to be so comprehensive. The 1948 Act, by its own definition, was to adjudicate and pay only certain property losses, those which were determined to be so-called compensable items, and nothing more. Even this very limited program was further compromised and restricted in the main to the payment of claims for only compensable items up to three-fourths the total value of such approved losses or $2,500, whichever was less.

Even the Department of Justice in opposing such bills as S. 1009 does not do so on the basis that the 1948 statute redressed all our grievances. It objects to this type of legislation on grounds that any further payments, collective or individual, is not necessary because the 1948 Claims Act was "a comprehensive statutory scheme which provided a reasonable and balanced contemporaneous remedy (for real and property losses) to the affected individuals". As the departmental letter of April 1986 clearly confesses, "The American Japanese Claims Act did not include every item of damages that was or could have been suggested. It did, however, address the hardships visited upon persons of Japanese ancestry in a comprehensive, considered manner, taking into account individual needs and losses. This effort to correct injustices to individuals was in keeping with our nation's best tradition of individual rather than collective response and was more contemporaneous with the injuries to the claimants than would be any payments at this late date...Nothing has happened since Congress last considered the matter to warrant a supplemental payment to internees. The results of the settlement process under the Act, long since completed, deserve to be accepted as a fair resolution of the claims involved."

The Department rightly refers to this as a claims program, as does the title of the Act itself, the Japanese American Evacuation

Claims Act of 1948. The program was intended and implemented as a claims procedure, with each individual claimant filing a claim for property losses suffered as a direct consequence of the evacuation process. The Senate measure, S. 1009, does not require individuals to file claims for specific amounts based on property losses or damages. No claims need be submitted, for the Attorney General is mandated to locate eligible evacuees and to pay them each the same lump sum compensation as all other qualified individuals are entitled to as a matter of grace and redress, not of claims to be proved and then settled by the Department.

Since this Claims Act is so often cited as the only money payment that may be required to satisfy redress, we shall go into this subject more thoroughly.

Summary of Claims Act Shortcomings

To recapitulate, the 1948 Claims Act was a restricted claims statute, simply that and nothing more. Claims had to be "adjudicated...according to law" and were limited to only "damage to or loss of real or personal property", with claims "for loss on account of death, personal inconvenience, physical hardship, or mental suffering" specifically prohibited. The onerous and often difficult if not impossible burden of proving actual ownership, value, loss, condition, and other demands of a claim for long-ago purchased items were required of the evacuee claimants. Sworn testimony or that of responsible witnesses, and not hearsay and/or secondary sources such as affidavits, were also required, with Justice Department examiners unwilling to take into account the "emergency fire sale" atmosphere of the forced disposal of valuable properties and the chaotic, fearful circumstances of the arbitrary mass military movement, to unknown destinations, limited to what one could carry either in their arms or hurriedly packed suitcases, barracks bags, or cardboard boxes, filled with household and personal effects, including items for personal health case, towels, bedding, sheets, pillows, clothes, shoes, underwear, etc. If infants, or the sick, or the aged were also involved, they added to the burdens. In such confusion, how could one spare the space and the energy to take accounting books, documents, and other legal papers with them to these wilderness camps!

The claims statute mandated the Attorney General to determine all claims filed by "award or dismissal...upon written findings of fact and reasons for the decision". Furthermore, no award could be made exceeding $2,500 except with special congressional appropriations. By legal interpretations, performance contracts, continuing relationships, ongoing activities, goodwill, growing crops and orchards and vineyards, etc., were not allowed. Neither were preparations for camp, rental and management fees, company and corporate operations, including such institutions as churches, hospitals, retirement and old-age homes, etc.

The first claim was adjudicated and paid early in December 1949 to a Los Angeles realtor in the amount of $303.36 on a claim for $322.89. For the rest of that year and all of 1950, only 211 claims were processed, with only 137 to receive payments. These 137 evacuees were paid an aggregate $62,500, or an average of $450 per award. They had filed for a total of $141,373 for an average claim of $1,030 each. And these presumably were the easiest cases to adjudicate. Even more astonishing were the so-called administrative costs, for it was costing the Government $1,400 per case to pay a $450 award. Almost half of the claims were dismissed because of the "insufficiency of the evidence".

In this impossible situation, Congress acted on an amendment which would allow the compromise settlement of all claims for three-fourths of the amount claimed (75%) or $2,500, whichever was less. This now famous compromise settlement procedure broke the logjam and by the end of 1952, 15,354 claims amounting to $46,664,332 were compromised and settled for a total of $18,255,768. This amendment also authorized the Attorney General to accept affidavits and other documents pertaining to the properties, values, conditions, etc. Now, administrative expenses were reduced to $43.27 for an average $773.65 payment.

In June 1956,Congress approved the last amendments to the 1948 basic statute. Congress (1) authorized the Attorney General to compromise and settle all claims up to $100,000 under the 75% ceiling placed on the smaller pots and pans claims, (2) granted jurisdiction to the Court of Claims, under certain conditions, to consider claims upon application of the evacuees, (3) defined "claims by a person of Japanese ancestry" to include those filed by any profit or nonprofit corporation the majority whose stockholders are of Japanese ancestry, (4) also included internees detained but subsequently released or pardoned to a War Relocation Center, (5) properly postmarked claims to be considered as timely filed, and (6) allowing pending claims to be amended to include items made compensable by subsequent amendments.

The last award was paid in October 1965 by the Court of Claims in the amount of $362,500 for a claim by the California "Rice King" Keisaburo Koda of $1,210,000.

According to the Justice Department, some 26,568 claims amounting to some $140 million were filed, with a total of 26,568 claimants paid the aggregate sum of a little more than $37 million. Since many of the claims were "family claims", the Department estimates that most of the 120,000 evacuees received some compensation for some of their losses. All awards were paid on the basis of 1942 prices and without interest.

A special monograph prepared by a private research corporation for the Commission on Wartime Relocation and Internment of Civilians in the summer of 1983 estimated the same property loss as being between $800 million and $2 billion, which, when compared to the $37 million paid under the 1948 American Japanese Claims Act, suggests how nominal the Government payments were and how little of the actual losses were compensated for by the legislation approved almost 40 years ago.

The most conservative estimate of evacuee property losses that we are aware of is that of the federal reserve Bank of San Francisco which calculated that approximately $400 million in property was lost by Japanese Americans in the mass eviction of 1942. Whether that amount was only for Northern California, of all of California, or of the entire West Coast was not made clear. Using even these low estimates, the 1948 Claims Act paid evacuees less than ten cents on a dollar loss based on 1941 prices.

Since many of the awards were for the "pots and pans" of family units, the Department of Justice concluded that practically every evacuee received some payment. We dispute that contention since no data was given and our personal impression remains to the contrary. Regardless, compensation of ten cents on the dollar hardly seems fair and equitable for actual proven property losses.

Payments accepted Under "Duress"

No matter how the Department of Justice may try to explain and rationalize its so-called expedited procedure, under which most of the awards were ultimately paid, we Nisei Veterans, many of whom reluctantly were participants in the program, charge that the process under which claimants had to compromise and settle for $2,500 or three-fourths of the amount of compensable items, whichever was less, amounted to acting under "duress", especially when even the determination of compensable items and their values were set by government lawyers whose judgments were not subject to appeal.

In other words, in order to receive relatively early payments, evacuees had to accept compromises settlements of up to $2,500 or three-fourths of the amount of compensable items, whichever was less, regardless of the original claimed amounts. This meant that a claimant had to voluntarily surrender at least 25% of their approved losses in property to qualify for this "fast track" procedure. Since those who had to be imprisoned because they had no other place to go were paid only $12, $16, and $19 per month, regardless of age, experience, or position, and since they had to purchase non-issued goods either at the camp commissary or from catalogues, their meager savings of prewar times had been exhausted. They required transportation money and other funds to return home and try to rebuild homes, businesses, professions, trade, and/or farms, orchards, nurseries, etc., often in now hostile communities. They needed "see money" with which to rehabilitate and reconstruct their lives, to become responsible and respected citizens once again.

The Appellate Court in the Hohri case recognized the 1948 Claims Act as a "bounty" and not a true claims statute, noting that "We are not unmindful of the hard choice to which the Congress put the evacuees. By forcing them to choose between a readily administrative remedy and a costly lawsuit, Congress effectively forced the evacuees to settle for half a loaf, rather than risk a fight for which the Constitution declares to be theirs by right".

The Assistant Attorney General's letter ignores the overall objectives of currently proposed legislation when he insists that it is a proposition that the 1948 American Japanese Claims Act "deserve(s) to be accepted as a fair resolution of the claims involved". The "adequacy" and appropriateness of the Claims Act of four decades ago should not be an issue in this hearing because S. 1009 addresses itself to the "redress" of all grievances growing out of that World War II travail and tragedy of those of Japanese origin on the Pacific Coast, and not merely to property. The instant measure goes far beyond the limited scope of individual payments for property losses alone by providing individual "redress" in lump sum compensation of $20,000 to each "eligible" person and by authorizing a token community fund of approximately $100 million as symbolic "redress" for the Japanese American population which has died since the 1942 ordeal.

There is little doubt that among those who are familiar with the wartime mass eviction no amount of money can compensate the evacuees for their loss and/or deprivation of their civil and human rights, let alone their property damages. S. 1009 proposes a token solatium of $1.3 billion, of which $1.2 billion would be for the surviving evacuees. By comparison, in the class action suit brought by the National Council for Japanese American Redress, some $24 billion is requested for "Monetary and Declaratory Relief for Violation of the Plaintiffs' Constitutional Rights of Due Process, Equal Protection, Just Compensation, Petition, Privacy, Travel, Freedom from Unreasonable Search and Seizure, Freedom from Cruel and Unusual Punishment, and Civil, Statutory, and Common Law Rights". This contrast suggests that neither the Commission on Wartime Relocation and Internment of Civilians and the authors and sponsors of S. 1009 were overly generous in their proposal for nominal restitution.

Finally, it should be clearly understood that individual and collective compensation authorized by S. 1009 and H.R. 442 is to be paid regardless of whether an evacuee claimant received payment under the provisions of this 1948 Japanese American Evacuation Claims Act and/or signed a statement to the effect that the payment for property losses constituted full and complete satisfaction of all claims against the Government for property losses suffered in that 1942 military movement. Both the Senate Bill S. 1009 and the House companion legislation, H.R. 442, are redress measures and not solatium for property loss or damage. Therefore, the 1948 Act has no effect on the compensatory monetary payments contemplated by the present legislation in the Congress.

In passing, it should be noted that in commenting on this 1948 Evacuation Claims Act, Judge Wright of the Court of Appeals of the District of Columbia said "The Claims act was not passed in recognition of a legal wrong inflicted upon the evacuees. On the contrary, the history of the Act reveals that Congress was acting out of moral impulse, not legal obligation...it was intended as a bounty, not an actionable wrong."

It should be noted in passing that the Commission's recommendations emphasized that no redress payments should be made for loss or damage to private property as such, thereby making certain that the Congress understands that there is no payment authorized for those already reimbursed, if only partially, for their property losses under the 1948 Claims Act.

12. **Why Monetary Redress?**

Summary: Historically, legally, and significantly, the standard or measure of loss and/or damage is in terms of dollars; money is also the substitutionary formula and symbolic equivalent for physical and mental injury and death; money, too, is the only truly acceptable means to provide and/or extend solatium, bounty, or grace for mistakes, governmental errors resulting in injustices, and unexpected and unanticipated consequences of some public gesture, offense, guilt, or misguided activity; accordingly, monetary compensation is the only truly appropriate, meaningful, and justifiable redress to be accorded Japanese American evacuee victims.

We are deeply indebted to John Nakahata of San Francisco, a recent graduate of Harvard Law School and now the law clerk for United States District Court Judge John Pratt here in Washington, for researching and preparing a perceptive and invaluable memorandum of American precedents for the payment of monetary compensation for governmental actions involving citizens of the United States.

His careful research informs us that it is long-established custom and practice for Congress to overcome the common law doctrine of sovereign immunity, the statute of limitations, and the inability of the aggrieved to avail themselves of the ordinary judicial processes, in special cases of demonstrable injustice by passing remedial statutes. He remembered that as far back as 1798 Congress voted to reimburse the fines of those paid by those convicted under the Alien and Sedition Act. He also recalled a number of American Indian Land Claims where the Congress decided that the justice involved outweighed the considerable monetary payments at stake.

This young attorney and American law researcher noticed that Congress has even granted individual compensation on a mass scale for loss of bodily freedom when that loss was not even the consequence of a wrong committed by the United States. The War Claims Act compensated every "civilian American citizen" $60 for each month they were held prisoners of the Imperial Japanese armed forces. The coverage of this unusual statute was subsequently extended to American civilians captured by the North Koreans who also received $60 per month, and those held by the Communist forces in Southeast Asia received $150 monthly.

Japanese Americans Never Paid for Wartime Imprisonment

Nakahata emphasizes "Because Japanese American citizens have never been compensated for their losses of bodily freedom, they are, ironically, in a worse position than if they had been detained by the enemy. Had a Japanese American been interned by the Imperial Japanese Government after the outbreak of war, for instance, he could have been compensated (by the United States) for the loss of bodily freedom under the American War Claims Act. As an American citizen, however, who was incarcerated in the United States by the U.S. Government in contravention of the protections enunciated in the Bill of Rights, he has yet to have his injury financially acknowledged by the U.S. Government."

Even more ironic for us American citizens, "enemy alien" Germans, Italians, and Japanese against whom the Federal Bureau of Investigation (FBI) had individual information as to their probable willingness to aid their respective homelands and who were "interned" in Alien Enemy Detention Camps operated by the Department of Justice, were entitled to the more generous provisions of the Geneva Convention, controlling their housing, food, recreation, clothing, etc.

After the surrender of the Axis powers, the Congress approved legislation to compensate American prisoners of war for the days they were imprisoned in these camps. And our country also enacted a War Claims Commission statute to settle private American claims against the war damage caused by Japanese troops.

Even as recently as August 27, 1986, Congress approved Public Law 99-399, 99th Congress, cited as the Omnibus Diplomatic Security and Anti-terrorism Act of 1986, which has a section entitled "Victims of Terrorism Compensation Act", which provides, in addition to their usual compensation, $50 each day that an American Civil Service Employee or member of the Armed Forces was held hostage or captive during the period of November 4, 1979, and ending January 21, 1981.

Although the situations are quite different and the numbers involved much smaller, still it is instructive that only last summer, when fiscal and budgetary problems were also at issue, Congress found the ways and means to authorize compensation to certain deserving United States citizens for unwarranted actions by foreign states and/or individuals.

Rules to Right Constitutional Violations Set

Researcher Nakahata calls our attention to the fact that the judiciary has developed damage rules to right constitutional violations or torts against either state or federal officers. As he explains it, once a violation of a legal duty is determined, the defendant must compensate the injured person for all injuries sustained as a consequence of defendant's actions. The basic principle of compensatory reward, it is emphasized, is one of substitutionary relief. And, what is more basic as a replacement for the property itself than money, with which one may try to purchase a replacement or comparable item?

While it appears unclear to Nakahata from appellate rulings as to whether procedural and substantive violations are equal in their culpability, the Sixth Circuit Court noted that presumed damages are most appropriate in instances of recovery for dignitary interests, including emotional harms to the plaintiff such as humiliation, deprivation, indignation, fear, intimidation, helplessness, anguish, embarrassment, pain, and suffering.

A more recent incident may also prove persuasive as to monetary compensation for the "loss of freedom", for forced confinement for violating police orders and regulations. During the first three days of the so-called Vietnam protest here in Washington, D.C. in May 1971, some 7,000 protesters were confined behind the fences of the Robert J. Kennedy Stadium, a city facility. Some were held in custody for a total of four days. A district court awarded some $12,000,000 in damages, an amount that was later reduced to $2,800,000. Charges against some 2,500 were dismissed, with payments awarded to 1,200, ranging from $50 to $1,800. These are the pertinent facts as best remembered by an officer of the American_Civil Liberties Union.

That the passage of time does not diminish these crimes against humanity was evidenced again as late as February 24, 1986 when the Supreme Court refused to block the extradition to Israel of John Demjanjuki, a retired Cleveland auto worker and a denaturalized citizen, accused of being "Ivan the Terrible", the gas chamber operator at the concentration camp at Treblinka, Poland, where 900,000 Jews were exterminated during World War II. The head of the Justice Department's Office of Special Investigation declared that "This (action) shows the Government is serious and it sends a signal to all the people (Nazi war criminals) who are still out there. The passage of time does not diminish what they've done." (underlining supplied). By coincidence, at this very time, half a century later for alleged gas chamber killing of Jewish prisoners that were contemporaneous with our imprisonment in American concentration camps, the new State of Israel is trying Demjanjuki for his wartime atrocities.

Holocaust Redress Experience

Though at the time of our wartime tragedy, many officials and even court judges, let alone individual citizens and inmates, termed the barrack-cities in which we were incarcerated as concentration camps, we did not then--and do not now--compare them to the genocide-killing prison camps of Hitler's Nazi Empire, even though it may be of some interest that the Colonel Karl Bendetsen who supervised the WCCA declared that anyone with as much as one-sixteenth Japanese blood had to go to the Army-built communities, as against only one-eighth Jewish blood that condemned one to the extermination camps. General John DeWitt himself, though, in his

Final Report insisted that if a person had as much as one percent Japanese blood, that individual had to be classed as Japanese and sent to the War Relocation Authority camps.

Be that as this may be, it may be instructive to learn a little about the redress program developed by West Germany as a result of their peace treaty efforts. Much of the information, strange as it may see, is fragmentary, with most supplied by New York Attorney Samuel Kagan, the Executive Director of the (International) Conference on German Claims Against Germany. The Federal Republic of Germany (West Germany), but not the Peoples Republic of Germany (East Germany), has agreed to an indemnification program that appears to be still in force and effect.

As with S. 1009, Jewish redress is paid both to individuals and to the State of Israel collectively for those who perished in the death camps and for the loss of certain reception and economic resettlement opportunities. Israel, being the acknowledged historic and religious homeland of the displaced and homeless Jews, was the recipient of the so-called collective redress compensation as the representative and on behalf of the exterminated victims of the Holocaust. Eligible claimants are individuals who were persecuted on account of their race, religion, or political beliefs. By far the great majority were Jews, political victims, although now certain non-Jews are also eligible. Various losses for which money damages were paid were for deprivation of liberty and loss of earning capacity, both as a result of official persecution.

Up to 1985, some four million individual claims had been timely filed and most paid. Two types of individual claims are recognized: lifetime annuities and one-time lump sum payments. The amounts depend on the persecution and pain suffered, the time imprisoned, the value of last properties, etc. Lifetime annuity claims number about 200,000; most of the others are one-time compensation recipients and number into the millions.

Supplementary information provided in an Associated Press dispatch in The Japan Times of February 15, 1986, datelined out of Bonn, West Germany, by Susan Smith, noting that "More than 40 years after the defeat of Adolph Hitler's Third Reich, West Germany is still paying restitution to the Survivors of the Holocaust..."

"Since 1953, the West German Government has paid $30 billion to victims of persecution and their families and relatives, the Bonn Finance Ministry says. Most of the recipients have been Jews.

"Bonn is still paying $693 million a year to Holocaust victims, most of it in monthly checks up to $1,346, the Ministry says..."

In an interview with the Director of the Conference on Claims Against Germany, it was explained that individual claims had to be filed and processed before payment because every person had experienced personal suffering and sacrifices which could be quite different from those of others, especially from other countries and regions. General redress on an equal basis was not possible, especially since different negotiations had to be worked out for the various segments of the victimized population.

Monetary Redress Formula Acceptable and Appropriate

S. 1009 provides both collective and individual restitution, which we believe is most correct because, though individuals suffered greatly, so did the collective community of Japanese Americans, most of whom now have passed on for age and other reasons. Most certainly they should be recognized, as they are, even if individually they cannot be awarded monetary payments, nor their heirs for many understandable administrative and other reasons.

Quite properly, per diem payments could not be added to the compensatory restitution for rather obvious reasons too. It would be unfair to the so-called voluntary evacuees who, encouraged by the Army's promptings, on their own expense and without the promised safeguards moved to interior areas with their families and friends. It would also be unfair because it penalizes those who, for one purpose or another, left camp early, for volunteering for the Army, for continuing college and university education, to work in the harvest fields and on farms, to find permanent employment and housing when cleared for such relocation by the WRA authorities.

All Japanese American evacuees suffered, some more seriously than others as to health and injuries and others as to property and other losses, because they were, and are, of Japanese ancestry, and only because of race. In this sense, all are equally guilty of this accident of birth. So, all should share equally in the token redress that this legislation offers. We should not delay enactment by raising questions which have to be resolved by a busy Congress, while the older and more sickly or injured die each day that this process is delayed. Why deny to these elderly and sickly or injured fellow evacuees the modicum of redress that is long past due them.

13. **What Are the Official Views of the Justice Department?**

Summary: The Department of Justice opposes enactment of S. 1009, and similar legislation, because (1) its proposed benefits are not needed, (2) they would result in the rewriting of "official history regarding this particular military action, and (3) the 1948 Evacuation Claims Act considered and paid for legitimate property losses incurred.

By letter dated April 25, 1986, Assistant Attorney General John Bolton of the Office of Legislative and Governmental Affairs of the Department of Justice wrote to the Chairman of the House Judiciary Committee opposing approval of H.R. 442, whose provisions and even language, except for a few changes, are identical to S. 1009. On April 29, 1987, another Assistant Attorney General, this time Assistant Attorney General Richard Willard of the Civil Division, restated in oral testimony approximately the same words at another Hearing before the same House Judiciary Subcommittee on Administrative Law and Governmental Relations, would probably reject S. 1009.

The Administration, through its legal adviser and spokesman that is the Department of Justice, concedes that American Japanese suffered greatly and wrongly in World War II. Nevertheless, in words that seem to us ambiguous, evasive, and inconclusive, the Department rejects S. 1009 as unnecessary and even administratively difficult. It notes only that the Government has already paid what it considers legitimate claims for the loss of property by the 1948 Evacuation Claims Act. It concludes by making the remarkable charge that "official history" of the times should not be rewritten and/or revised until all of the facts are known. The massive, authenticated, and definitive volumes of the Commission on Wartime Relocation and Internment are summarily dismissed since historians and scholars no doubt will debate the issues for years to come.

Staggering implications of that stance amazes us, for if the Congress, or the Administration, or even private corporations and individual citizens were required to do nothing and to maintain the status quo until all debate and controversy had been resolved to everyone's satisfaction, no constructive activity or progress would ever be possible. Besides, it must be kept in mind that already there is an official history on those troubled times which automatically is composed of the memoranda and notes of the administrators, generals, congressmen, and others involved in the evacuation, including General DeWitt's Final Report, in the Archives. We insist that that history be changed and brought up to date to conform to the latest information, facts, and theories now available to the general public and others. And if S. 1009 can accomplish even that much it will be good law and much better education.

Keeping in mind that its World War II Attorney General Francis Biddle in his memoirs denounced evacuation as "unwise, unnecessary, and unnecessarily cruel", it is interesting to note the specific objections of this Administration to S. 1009 and similar legislation.

Commission Findings

Regarding the "Findings and Conclusions" of the Commission which are included in the preamble to this Senate legislation, the Department of Justice questions "the wisdom and propriety" of the Commission's efforts, noting that such "matters (are) best left to historical and scholarly analysis rather than debated by Congress", adding that "We (the Department) do not believe that this bill should be the vehicle for the promulgation of an 'official' version of these historic facts."

In refutation, we would point out that an "official" history of this wartime activity is already in the files in the Archives but it only reflects the opinions, judgments, and actions of those who were in charge of this atrocity. We need the long secret data and facts now available through resort to the Freedom of Information Act and the latest information on this subject matter to be made part of that "official" version in order that the truth can be revealed and the reactions of all concerned judged on the actual conditions and circumstances which existed at that fateful time. The time has long past in this country, what with Watergate and the Iran-Contra scandals, to allow coverups and concealment of facts from all branches of government and the citizenry at large. We must know the truth, and the truth shall make us free, as the prophets of old promised.

Specific Purposes and Objectives of S. 1009

Title I authorizes a National Apology. The Department finds no necessity for a formal apology since many high government officials, among others, have stated that our wartime mistreatment was a "mistake". Cited are President Ford's action revoking Executive Order 9066 and the Congress repealing Public Law 77-503 which provided criminal penalties for violating the former as examples.

We Nisei veterans do not find acceptable the concept that a "mistake" was made, since "mistakes" are often not a matter of judgment or premeditation but an exceptional extemporaneous reaction. We believe, as did the Commission, that it was not a "mistake" that we were evicted, excluded, and many imprisoned but a deliberate, malicious, and racist action. Only full redress as envisioned by S. 1009 will tend to assuage and militate our emotions and heartfelt hurt and that includes a public national apology, which we understand may be the first in history for the United States for such unsanctioned miscarriages of personal liberty and constitutional justice.

Next, for presidential pardons for certain victims of racist activities, the Department considers this authority to be completely unnecessary because the Government has offered to vacate the convictions of all Japanese Americans who were convicted of violating certain wartime restrictions imposed by Executive Order 9066 and its related actions, including the three coram nobis challenges for new trials.

And, concerning agency reviews, for the restitution of positions, status, or entitlements, the Department sees "no need for this provision, are uncertain as to how it could be fairly applied in practices at this late date, and suggest that it could lead to extreme difficulties with resultant litigation."

Regarding these two latter provisions, to our knowledge only a few are involved (probably less than 100 altogether in both categories) and these relatively minor objectives are only to clean up the legal "mess" left by evacuation and its aftermath. Simple justice calls for an effort to secure their rights, for justice and equity cannot be measured only in the numbers involved alone.

This key proviso would establish a Civil Liberties Public Education Fund, in the amount of $1.3 billion to pay individually eligible evacuees $20,000 each as redress compensation, and to set aside an additional $100 million for community purposes, including for free public information and education and "for the general welfare of the ethnic Japanese community."

According to the departmental communication, "The Department opposes these provisions for paying additional reparations to individuals when Congress has already enacted a comprehensive statutory scheme which provided a reasonable and balanced contemporaneous remedy to affected individuals. By enacting the 1948 American Japanese Claims Act, Congress recognized long ago that many loyal Americans of Japanese descent were injured by the wartime relocation and internment program. Although the Commission's report challenges the amount of compensation chosen by Congress as inadequate, Congress has spoken after considerable debate, and there is no good reason to question that settlement now three-and-a-half decades later."

In an earlier section, we have commented at length on this 1948 Japanese American Evacuation Claims Act, demonstrating that it was a property settlement statute and not complete and full redress as S. 1009 would provide. Moreover, it was parsimonious in its payments which in most instances were accepted under "duress" that forced the receiver to surrender one-fourth of the compensable items in the claim, or $2,500, whichever was less.

The Justice Department also decries what it alleges are "heavy administrative burdens on the Attorney General". To me, I can only respond by saying that if the Department had, in the first place, successfully opposed the arbitrary, unconstitutional directives of 1942 there would not be any problem at this time relating to this particular corrective measure. Since it failed miserably in its responsibilities to a small minority, it should not so blatantly try to dismiss its obligations so cavalierly, especially since such valid expenses are part of the general administrative budget of the Department and approved by the Congress.

The Department opposes too "the concept of a special fund incorporated (into the bill S. 1009). As noted earlier, we do not believe that it is the proper function of our Government to adopt 'an official version' of these historical events. Similarly, we oppose spending hundreds of millions of dollars to 'educate' the American people to accept this official interpretation of our history". Not only have we commented on the departmental opposition earlier, we emphasize the mammoth "educational" program that the Government, and particularly the Department of Justice, is implementing in these five years to celebrate the Constitution and its Amendments.

We are positively concerned that the Department of Justice, for its part in this bicentennial commemoration, should enthusiastically spend some of its substantial advertising and educational appropriations not only to develop an "official" consensus version of this greatest single violation of the constitutional rights of a minority in this century but also to help "educate" the American people at large to what happened to us under circumstances that conceivably could once again threaten our land, how we responded in spite of the forces arrayed against us, and what we have achieved as a consequence of our devotion and faith in the Constitution, and the people, and the Government of the United States. Education is essential to an understanding of what is, and was, involved almost half a century ago. Lest we forget! And, how can the Department spearhead an educational campaign about the Constitution without repeatedly mentioning our travail!

Also objectionable to the Department of Justice are the projects "for the general welfare of the ethnic Japanese community in the United States".

To be truthful, strictly from the humanitarian point of view, we are devastated by the Administration's stance, for we personally believe that there could be no more appropriate use for redress appropriations than their use to promote and benefit the welfare of the Japanese American population, for what the entire ethnic community is today is the direct consequence of their evacuation experiences, including those who were the innocent victims, for one unknown and undesignated reason or another, of this American atrocity on the constitutional rights of some of its citizens. Definitely--for instance--there is need for many of the elderly, the sick, the lame, the mentally disturbed, etc., for expensive medical attention, hospitalization, and/or retirement homes for their health and mental problems caused by the vicissitudes of their wartime mistreatment.

The proposed individual solatium of $20,000 for each individual "eligible" evacuee certainly would not begin to pay for even a year of hospitalization, special medical costs, or retirement home fees. Even among evacuees, it would seem that those who are most needy should receive the earliest and most generous awards if at all possible administratively without upsetting the payment schedule.

Definition of Eligible Individuals

The Department of Justice "also oppose(s) the breadth of the definition of eligible individuals set forth (in the bill)...

"First, the term 'living' is imprecise. It is unclear whether the term is intended to refer to the time of the enactment of the legislation, the time when application for the benefit is made, or the time when payment is made."

We Nisei veterans of World War II have already suggested that the time of enactment is appropriate.

"Second, the definition would cover 'any living individual' who had been subject to the exclusion, relocation, or detention, without any express exclusion of persons residing outside the United States," the departmental letter complains..."The all inclusiveness of the term 'eligible individual' overlooks the important factor that at least several hundred of the detainees were fanatical pro-Japanese, had terrorized their fellow detainees loyal to the United States,and voluntarily sought repatriation to Japan after the end of the war...It would be unfair to the United States and to the loyal persons of Japanese descent if the benefits of this legislation were made available to persons who are disloyal to the United States."

Please excuse my personal reactions when I hear or read such pejorative comments, which ill becomes the Department of Justice and the Government of the United States. Departmental personnel are well aware of the fact that many of the alleged fanatics, terrorists, and voluntary repatriates acted as they did out of sheer frustration at being incarcerated like common criminals in prison camps or being summarily deprived of their personal and constitutional rights. We know that many would have behaved differently if they were returned their prewar status. Besides, there is no record of any of these individuals being convicted of espionage or sabotage against American interests and facilities, or being overtly disloyal. Such gratuitous and misleading comments tend to cause too many to believe that these people were not only most numerous but also dedicated to violence and dangerous activities. Such unsolicited remarks are prejudicial and intended to create automatic and unreasoning opposition to S. 1009 and similar legislation! Remember please, the only persons convicted of espionage and sabotage against the United States were non-Japanese Caucasians who were less visible than we Japanese Americans were, and are.

While the Assistant Attorney General's letter cites a number of cases involving so-called disloyal evacuees, to the best of my recollections in not a single case did any of the courts find Japanese Americans involved to be guilty of any criminal act, let alone disloyalty. My impression is that most of the cases cited by the departmental officer had to do with the loss of American citizenship because of violations of the nationality code of those caught by the war in Japan and who were attempting to regain their citizenship to return to this country.

In those instances involving repatriates and renunciants, particularly the latter, the courts have uniformly found their deportations, if not voluntary, were caused by "duress" and, therefore, not valid.

Ninth Circuit Court of Appeals Chief Judge William Denman, for example, in a leading case sustaining Federal District Court Judge Charles Cavanah, denounced the "unnecessarily cruel and inhuman treatment of these citizens (a) in a manner for their deportation for imprisonment, (b) in their incarceration for over two and a half years under conditions in major respects as degrading as those of a penitentiary, and (c) in applying to them the Nazi-like doctrine of inherited racial enmity, stated by the Commanding General ordering deportation as the major reason for that action."

After finding that the renunciations of all minors were invalid on their face, the Ninth Circuit remanded the remaining cases to Federal Judge Louis Goodman who, in a class action suit, declared that all the renunciations were null and void.

To provide some perspective in the form of statistical evidence, Dillon S. Myer, Director of the War Relocation Authority, in his book entitled "Uprooted Americans", wrote that "Of a total of 120,000 people of Japanese ancestry who were at some stage the responsibility of the WRA between 1942 and 1946, a total of 4,724 repatriates and expatriates sailed for Japan on five different dates...Of the4,724 total number, 1,659 were alien repatriates, 1,949 were American citizens, all but about 100 were 20 years of age, mostly children under 15 years of age accompanying repatriate parents; and 1,116 renunciants." This covers the period up to February 23, 1946.

On May 21, 1959, then Attorney General William Rogers announced that of the1,116 Nisei renunciants who went to Japan, 685 of these had recovered their United States citizenship. Of the total of 5,766 Japanese Americans who had given up their citizenship, 4,978 had regained it by May 1959. None of those who renounced their citizenship were ever charged with any crime, including that of disloyalty. Indeed, when the Tule Lake "Segregation Camp" was closed in January 1951, all 4,315 renunciants whose cases had been remanded by the Ninth Circuit to Judge Goodman in San Francisco, were released by the Justice Department to relocate wherever they pleased while awaiting the ultimate decision as not being dangerous criminals or disloyal.

In quick summary, it can be stated that since the 1,659 alien repatriates would have had to enter the United States prior to the 1924 Japanese Exclusion Act, it can be reasonably assumed that most, if not all, are dead. Of the remaining, since most were children under the age of 18 at the time of their "deportation" to Japan, it is our general belief that most of them, if living, have returned to the United States for one reason or another. Accordingly, we doubt that there are many residing outside the United States would be eligible to receive individual redress payments under S. 1009.

Moreover, we believe that the time has long since past when every evacuee should be given a loyalty test, regardless of where they may be residing, for we know of not a single instance in Japan or this country where one was ever convicted of disloyalty, to qualify for these compensation payments.

While the Justice Department emphasizes the negative, the fewer than 6,000 American born Japanese who renounced their citizenship under circumstances of being imprisoned in high risk penitentiaries, we Go For Broke Nisei Veterans prefer to stress the positive, that so few in the more than 120,000 evacuees did surrender, most only temporarily, their citizenship papers. Most had the faith to sustain them in their adversity.

14. What Was the Military Necessity on the West Coast?

Summary: Since in fact General John DeWitt, Commanding General of the Western Defense Command, could not rely on actual military contingencies to justify military necessity, he resorted to distorted sociological, cultural, and racial concepts to comprise the presumed military necessity authoring the evacuation and other related activities directed against those of Japanese ancestry on the West Coast of the continental mainland, while rallying those fearing the yellow peril menace to his cause.

Following the "dastardly" attack on Pearl Harbor by Imperial Japanese naval and air forces on December 7, 1941, martial law was declared for the then Territory of Hawaii, which was also designated as a Theater of War. The Commanding General of the Hawaii Department, De Los Emmons, took over active leadership of Island Government and as a benevolent dictatorship governed the Territory with firmness and fairness. More than a third of its civilian population was of Japanese ancestry.

On the Pacific Coast of the United States, 3,500 miles further from the Japanese homeland than Hawaii, there was no emergency or threatened danger that required any action so drastic as martial law. In California, the State with the largest population of those of Japanese ethnicity than any other mainland jurisdiction, less than one percent of the population was of Japanese origin, while along the coastal areas of Washington, Oregon, California, and Arizona the grand total of all those of Japanese background was less than two percent. With some minor adjustments, life on the West Coast proceeded almost as if there were no threat from the Japanese imperialists. Nevertheless, the Army identified the region as a Theater of Operations, a classification considerably below that given the Aloha Islands and indicating far less danger from possible threats from the enemy Japanese. The Commanding General of the Western Defense Command, John L. DeWitt, actually had little more to do than serve as a quartermaster supervisor of ships, arms, supplies, and men and guide them onto their respective berths for overseas transportation.

Around mid-February 1942, the Paradise Islands were downgraded to be the vast staging area for American naval, air, marine, and army personnel, their weapons, ammunition, etc., for the bloody assaults to come on the Pacific Islands of the former League of Nations Japanese mandated protectorates and in the China-Burma-

India Theater. Indeed, only a few days prior to the issuance of Executive Order 9066, authorizing General DeWitt to order the evacuation of Japanese Americans from the western halves of Washington, Oregon, and California and the southern third of Arizona, Admiral Harold Stark, Chief of Naval Operations, and General Mark Clark of General Headquarters in Washington, D.C. had emphatically testified that the Pacific Coast was not to be considered a battle area and was of low priority for preparations to resist any possible but improbable invasion attempt by the Japanese enemy.

American Victory Assured

After the Battle of the Coral Sea in May 1942, it was clear that Japan was on the defensive. A month later, after the pivotal historic battle of Midway, it was clear that Japan ultimately would be defeated in the war.

Despite rumors and purported documentation by Navy Secretary Frank Knox and the (Supreme Court Justice Owen) Roberts Report, there had not been a single case of espionage and/or sabotage by a resident alien or citizen of Japanese descent before, during, and after December 7, 1941.

So what was the military necessity demanding evacuation of all Japanese, aliens and citizens alike, from their lifetime homes and associations?

One was the remarkable deduction of then Attorney General Earl Warren of California, General DeWitt, and others in the Presidio of San Francisco, the headquarters of the Western Defense Command, that the lack of any evidence of espionage and sabotage by the American Japanese population was proof positive that they were so well disciplined that they were waiting for the coming invasion by Japanese troops before carrying out their nefarious assignments against United States defense.

Another was that quantities of so-called contraband, such as firearms, ammunition, cameras, short-wave radios, etc., and such martial arts paraphernalia as swords and bows and arrows, as well as hunting knives, binoculars, telescopes, etc., were discovered by the Federal Bureau of Investigation agents. But, in actuality, it was learned that most of those items were sports equipment and could hardly be used in modern warfare against a well-trained and equipped enemy.

Still another was that certain lights were seen signalling shore to ship instructions to submarines at night along the seashore. Later, it was discovered that these lights were simply flashlights being carried by farmers at night to visit outhouses along the shore. DeWitt claimed that "for a period of several weeks following December 7, substantially every ship leaving a West Coast port was attacked by an enemy submarine. This seemed conclusively to point to the existence of hostile short-to-ship (submarine) communications." The record shows that in the period 1942 to 1943, 2,004,234 tons of cargo were sent to Hawaii from the West Coast without a single ship loss, contrasted to 548 allied and neutral ships lost to Axis raiders in the North Atlantic in this same period.

Yet another was alleged illegal radio and other communications which were monitored by the federal Communications Commission and were found to be figments of the imagination.

So, in spite of the protestations of the General, there was in fact no real military necessity for the complete removal and exclusion of Japanese Americans in the spring of 1942.

DeWitt and his cohorts then shifted to the protective custody argument, that for the protection of the Japanese themselves from violence of anti-Japanese groups, such as the Filipinos and the Native Sons and Daughters of the Golden West, as well as farmers in competition with the Japanese, evacuation was a military necessity. At this juncture, we wish to stress that it is the American belief that the criminals should be incarcerated, and not the intended victims. This is a local police matter of law enforcement and a Hitleran excuse for extermination. Also, the facts do not collaborate the General's allegations. Carey McWilliams, Commissioner of Immigration and Housing for the State of California officially reported, "Actually, there were only two reported instances of violence. On December 27, 1941, a fight occurred between Filipinos and local Japanese and on January 1, 1942, unknown persons fired several shots at a Japanese in Gilroy." Early in February 1942, the San Francisco Chronicle editorialized, "The supposed hysteria over enemy aliens and their descendants scarcely exists among the people themselves...but the excitement is visible almost entirely in political and journalistic circles...They are seeking to capitalize on the supposed excitement of others which is mostly a figment of their own imaginations."

If General DeWitt and his staff conscientiously and honestly believed that the Japanese, aliens and nonaliens as the military posters distinguished the Issei enemy aliens and the United States citizen Nisei, they would have acted quickly and immediately after the Pearl Harbor destruction of several of our capital ships. But the actual timetable belies any belief in such an emergency.

It was two full months after the Honolulu debacle that Executive Order 9066 was promulgated on February 19, 1942, authorizing the wholesale summary evacuation of persons of Japanese background. And, it was not until August 7, 1942, eight full months after the first enemy bombardment took place, that all 110,000 civilians of Japanese origin were forcibly evicted, without due process of any kind, from their life-long homes and associations on the Pacific Slope. Where is the urgency, where is the emergency, where is the military necessity?

On June 2, 1942, Public Proclamation No. 6 was issued by which DeWitt forbade further voluntary migration by people of Japanese descent from the eastern half of California and simultaneously announced that all such people would be eventually removed from this area directly to WRA camps. No reason, military necessity or otherwise, has ever been given as an explanation for this unfair second forced evacuation, for most of the persons in this area had voluntarily moved, at their own expense and risk to this free zone, at the early encouragement of this same General DeWitt. The eastern halves of Washington and Oregon and the northern half of Arizona were not affected by this surprise second eviction and exclusion and detention.

Military Necessity Argument Changed

When it became apparent that in fact no real or reasonable military necessity dictated Executive Order 9066, DeWitt and his Army colleagues in the San Francisco Presidio shifted from military considerations to sociological, cultural, and racial grounds for explaining the mass military exodus.

They opted almost completely for the rationales, the allegations, the myths, and the suspicions that California Attorney General Earl Warren had submitted to the congressional Tolan Committee on National Migration at the San Francisco hearings on February 21, 1942: (a) that there were more aliens among the Japanese than from any European immigrant group (because Japanese were ineligible for naturalization under federal statutes, unlike their Gernman and Italian counterparts, for instance); (b) that too many belonged to that mysterious eastern religion, Buddhism, or were emperor worshiping Shintoists; (c) that too many were Kibei, educated in Japan and indoctrinated in Japanese nationalism; (d) that too many were dual citizens, holding both American and Japanese citizenships; (e) that there were too many Japanese language schools; (f) that the distribution of the Japanese in California around defense installations and defense industries, airports, harbors, railroad rights of way, government offices and buildings, radio stations, telephone and telegraph lines, etc., were too numerous and well-situated to be coincidental and were a menace to the national defense; (g) that Nisei workers had deliberately insinuated themselves in such essential employment as waterworks supervisors, research companies, doctors, etc.; (h) that they reproduced too much and easily (like rats); (i) that entire families worked night and day like slaves at jobs that really belonged to whites; (j) that they studied too hard at school in chemistry, physics, mathematics, and engineering; (k) that they send money back to Japan and used Japanese banks in this country for deposits, etc.; (l) that they voluntarily contribute to many Japanese military organizations in Japan; (m) that they belong to Japanese military and martial arts clubs; (n) that they have too many prefectural organizations with close ties to their Japanese homeland; (o) etc.

Who Is Japanese?

Completely ignored or conveniently overlooked were such critical facts as that there were more Italian "enemy aliens" in just the San Francisco Bay area alone than all alien and citizen Japanese in the entire country, including Hawaii; that there were more German "enemy aliens" in the Los Angeles metropolitan region alone than all alien and citizen Japanese in all of the 50 United States; that both German Americans and Italian Americans indulged in just about the same activities culturally, educationally, socially, etc., as American Japanese were accused of in their daily lives by DeWitt and his associates who conceived the sociological case against the Japanese. Strange as it seems, DeWitt apparently relied more on his civilian friends and advisers than on his military comrades in conjuring up his justifications for the evacuation.

What did the Commanding General of the Western Defense Command really think of the Japanese as a people when he urged their wholesale removal, relocation, and internment?

Perhaps his statement to Secretary of War Henry Stimson puts his philosophy about the Japanese as succinctly as anyone can:

> In the war in which we are now engaged, racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized", the racial strains are undiluted. To conclude otherwise is to expect that children born of white parents on Japanese soil sever all racial affinity and become loyal Japanese subjects, ready to fight and, if necessary, to die for Japan in a war against the nation of his parents. That Japan is allied with Germany and Italy in this struggle is no ground for assuming that any Japanese, barred from assimilation by convention as he is, though born and raised in the United States, will not turn against this nation when the final test of loyalty comes. It, therefore, follows that along the vital Pacific Coast over 120,000 potential enemies, of Japanese extraction, are at large today."

In an off-the-record press conference subsequently, the General made his now famous "a Japs a Jap" characterization.

His Final Report quotes DeWitt at his racist best. It was akin to naziism when Colonel Karl Bendetsen, acknowledged Director of the WCCA who initially proudly proclaimed in Who's Who that he was the principal architect and administrator of the program, decided that, if a person had as much as one-sixteenth Japanese blood, he would be considered as Japanese and subject to military orders. DeWitt went one step beyond Bendetsen, defining one of Japanese origin as "Any person who has a Japanese ancestor regardless of degree, is considered a person of Japanese ancestry."

What Was "Military Necessity"?

In preparing this statement, we looked back on the history of those days when Japanese Americans were presumed disloyal and tried to locate an exact definition of military necessity as it applied to our problems. As strange as it may seem, we cannot find anywhere the specific and exact military description of what was the military necessity that warranted our mistreatment.

In wartime, when the courts were considering the so-called test cases, none of the judges questioned and/or cross-examined the generals, the colonels, and the government officials as to just what constituted the military necessity that justified our evacuation.

It seemed that it was taken for granted that in wartime one did not question military authority, that, in the words of Judge Skelly Wright in the Hohri Class Action suit, the Supreme Court in the Korematsu case "erected a virtually insurmountable presumption of deference to the judgment of military authorities". As he noted, when Congress enacted the law creating the Commission on Wartime Relocation and Internment of Civilians earlier in the decade, "At a minimum, the Act (establishing the Commission) can be understood to be a formal statement that Congress no longer believed that the explanation provided by the military authorities for the internment program was adequate and that the issue should be reopened. Moreover, Congress took this step fully cognizant of the legality of the internment program...in so doing Congress finally removed the presumption of deference to the judgment (of the military)."

In our statement, the Go For Broke Nisei Veterans Association asserts that the facts as now known clearly demonstrate that no military necessity existed in 1942 when Executive Order 9066 was promulgated by the President and implemented by General DeWitt and that racism of the meanest sort, as well as a breakdown of the constitutional system, was responsible for our tragic experiences of World War II. On this basis alone, even without considering the other aspects of our mistreatment, redress is justified and long overdue.

15. What About Recently Discovered Intelligence Reports?

Summary: Though there has been general agreement, including from General DeWitt, that there were no convictions of any Japanese resident alien or citizen for engaging in espionage and sabotage against the United States before, during, and after December 7, 1941, witnesses and others who claim personal or official knowledge to the contrary.

While military necessity was advanced by the War Department as the reason for the issuance of Executive Order 9066, though never defined in military terms, it was never argued that resident Japanese aliens and citizens had engaged in espionage and sabotage activities to harm and damage the war aims of the United States.

Our own prejudiced view, as the sons of these Issei pioneers, is that few, if any, while understandingly retaining sentimental and family ties with their native Japan, would have participated in any overt action which would have crippled or challenged the American war effort. Most, if not all, had deliberately chosen to remain in the United States and to raise their families here, with hopes and plans for a better and more prosperous future for themselves and their posterity.

The Japan they knew and loved had disappeared in the Meiji Restoration and the militaristic, nationalistic, and imperialistic Japan of prewar days was not for them in the twilight of their years in this country. So it was more than understandable that they would not engage in sabotaging the nation's industrial and military complex, or seeking secret military plans and programs for Imperial Japan.

Besides, because of their high physical visibility as people, they would be caught more easily than others in any nefarious activity on behalf of Japan. And, because they could not by law become citizens to share the citizenship of their own children and remained Japanese nationals, they expected that the various intelligence agencies of the Government would keep close watch over them and their activities.

As a consequence, neither we nor they anticipated that military necessity would cause our evacuation. We were not aware of it at the time, but we now know that every intelligence agency opposed such arbitrary action as unneeded, unnecessary, and unwanted.

Navy Intelligence, which by intergovernmental agreement was assigned the responsibility of the Japanese in the United States; Army's Chief of Staff for Intelligence (General Mark Clark); Federal Bureau of Investigation, whose Director was the only national public figure to publicly denounce the effort; Federal Communications Commission, whose duty was to screen and monitor all communications in and between the United States and other foreign entities, and the State Department, whose secret agent wrote the Munson Report, all found formally and officially that the West Coast evacuation of those of Japanese ancestry was not necessary or desirable.

For some inexplicable reason, however, despite this preponderance of professional intelligence advice, the President and his Secretary of War preferred the racist, biased judgment of General DeWitt, the aging Commanding General of the Western Defense Command, who asserted the remarkable and strange theory that "The very fact that no sabotage has taken place to date is disturbing and confirming indication that such action will be taken". What kind of logic to base military strategy on?

Magic Cables and Intelligence Reports

At the 1984 and 1986 hearings of the House Judiciary Subcommittee on Administrative Law and Governmental Relations, several witnesses in an attempt to rebut the generally accepted fact, reinforced by the findings of the Commission, that no person of Japanese background, citizen or alien, resident in this country had committed any acts of espionage and/or sabotage during World War II, referred to the so-called Magic Code Cables.

They inferred that of these deciphered and decoded intercepted Japanese war and diplomatic messages which were classified so "top secret and highly confidential", none certified to the absence of spying and destroying military facilities for the Japanese enemy for those of similar ancestry but resident in the United States, mainland and the then Territories of Hawaii and Alaska.

In fact, the Commission had been informed of these Magic Cables after its other reports had been completed, had seen and studied them at length, and had issued an addenda concerning the allegations. Briefly analyzed, the Commission found that "the Magic cables confirm the basic analysis presented" concerning Japan's intelligence efforts on the Pacific Coast. It also discovered that these cables reveal that Japan's intelligence efforts were directed toward recruiting information from a variety of sources and emphasizes that "Utilization of U.S. citizens of foreign extraction (that is other than Japanese), aliens (other than Japanese), communists, Negroes, labor union members, and anti-Semitists in carrying out the investigations...would probably bear the best results."

In addition, the Commission learned that American intelligence agencies knew from secret, intercepted Magic Cables that the Japanese Government had instructed its staff to avoid the use of American Japanese in gathering information and other support activities. As it reviewed this allegedly "new information", the Commission returned again and again to its original conclusion that "There was no good argument for excluding or detaining Japanese American in World War II". (underlining supplied)

As far as we have been able to ascertain, except for one individual who failed to register as an agent pursuant to the Foreign Agents Registration Act under mitigating circumstances which the judge in the case recognized, no resident alien or citizen of Japanese ancestry was indicted, let alone convicted. But several German and Italian aliens, and a few citizens, were.

Our visibility as non-white, as being Asian, as a physical and colored minority, all contributed to causing us to stand apart, to "stick out" in a crowd, to be conspicuous even by ourselves, made us unimportant and even unwanted as spies and saboteurs for the enemy. As one might say, the facts of life made it most difficult for us to be useful to a wartime invader.

Ronald Lewis, considered by many as one of Britain's most distinguished military historians, the author of various books on illustrious figures as Churchill, Rommel, Montgomery, Slim, and Wavell, is world-renowned for his definitive best selling "Ultra Goes To War", the story of how the British broke the German ciphers early in World War II and that the intelligence material so gathered was crucial to the Allied cause. He also wrote what amounted to its Pacific analogue, "The American Magic: Codes, Ciphers, and the Defeat of Japan", published by Farrar Straus Giroux in New York, 1982, which became a Book Club selection the following year.

The Lewis documentary certainly confirms the Commission's conclusions. Of the 339 pages, only a few paragraphs even mentioned those of Japanese extraction in North and South America, let alone the United States. And in an instance or two, conflicting messages were intercepted, as those involving Admiral Nomura, the newly designated Ambassador to Washington and the aggressive Foreign Minister Matsuoka, the classic case of the dove and the hawk demonstrate.

Although Nomura presented his credentials at noon on February 10, 1941, a Magic translation of December 25, 1940, dispatched from Tokyo to the Washington Embassy, explained "With the appointment of Ambassador Nomura we wish to formulate a definite plan for our propaganda and information-gathering work by seeking cooperation of Japanese banks and business officials in the U.S." During the next few weeks the New York Consulate listed 18 different Japanese agencies suitable for intelligence collecting, and Washington reported on a meeting of journalists and businessmen at which they had both agreed to gather intelligence and to "cable" their "opinions and manipulations" secretly through diplomatic channels. But none of the businesses or organizations, including the newspapers, were owned or operated, or even managed, by a Japanese American or resident alien. We simply were not trusted.

Two Magic intercepts, of May 9 and 11, 1941, one sent to Tokyo from Los Angeles and the other from Seattle, told of Japanese representatives on the recruitment of spies, the surveillance of aircraft plants and their output, the "maintenance of connection" with "second generation" Japanese Americans in the Army, the study of shipping, the penetration of labor movement, etc.

Though Magic messages indicate the intentions and the hopes of the Japanese for the use of those pro-Japan elements in the Japanese American population, we have not discovered any reports as to their actual implementation and their success or failure in direct operations.

On the contrary, everything we know suggests that the plans of the prewar Japanese were either never undertaken or were decisively frustrated.

Magic may have suggested and even outlined and directed what should be attempted with Japanese Americans and their alien parents. But, it is clear that they were completely unsuccessful in their efforts.

To us, what happened in Hawaii before, during, and after the attack on Pearl Harbor is the absolute answer.

More than a third of its population were of Japanese origin, had been there longer, and had been more concentrated in certain areas, while on the entire Pacific Coast they constituted less than two percent, were scattered over much more territory, and had been more assimilated into the general society. Its prewar Japanese communities suffered less racial, social, and economic discrimination, and there were so many years and opportunities to develop "fifth columns" in the Islands.

That fascistic Japanese authoritarians were unable to mobilize and rally the Hawaiian Japanese Americans to their banners demonstrate louder than words and more clearly than any other sign that both the alien and citizen Japanese population of the Islands were truly devoted and dedicated to the United States of America, and not to Japanese imperialism.

Regardless of what the official Japanese plans were for the attack and possible subsequent invasion of the Hawaiian Islands, they were not able to solicit the cooperation of the resident group and, therefore, any hopes that they may have entertained were only "dreams" and contingencies, Magic intercepts nothwithstanding.

If there had been any dissidents, as there probably were a few as there would be in any community, the Federal Bureau of Investigation (FBI) quickly and effectively rounded them up after December 7, 1941, on the basis of individual warrants or information that they might be dangerous to the safety and security of the Territory. Those who could not be "cleared" within a few days were shipped off to the mainland where they joined German and Italian, as well as other Japanese enemy aliens from the continent, in special prison compounds organized, operated, and policed by the Enemy Alien Control Unit of the Department of Justice.

Unlike American citizen Japanese and the aliens who were not individually identified for Department of Justice detention, these considered "likely to be dangerous" Japanese enemy aliens were entitled to, and were granted individual Loyalty Board hearings. As they were "cleared", they were permitted to join their families in the WRA camps. By war's end, as far as I can remember, nota single enemy alien Japanese remained in the Department's custody, and only a very few were repatriated to Japan and at their own request.

To those who continue to insist that they know of illegal acts of espionage and sabotage on the part of resident alien and citizen Japanese, I can only respond by noting that court records do not show indictments and/or convictions. And, if the statute of limitations has not run against them, I suggest that there remains calling such instances to the proper authorities and seeking prosecution.

As for those on the mainland, I can only emphasize what happened in Hawaii as being exemplary of what would happen in our case.

Armies, like other enterprises, have contingency plans to try to take advantage of every possible situation that may develop. But, if their plans cannot be put into execution, they are not worth the paper on which they are printed. By coincidence, for illustration, we have heard that the State Department had a number of contingency plans for us of Japanese ancestry. One would have traded us in prisoner-of-war exchanges for American prisoners of the Japanese enemy. Another would have "deported" us after hostilities ceased to Japan. Still another would have others of Japanese ancestry from Mexico, Peru, Brazil, Canada, etc., brought to the United States and used in prisoner-of-war exchanges. But, none of these contingencies developed into reality, so few know about them 45 years after they were discussed, proposed, and discarded. The same applies to the many contingency plans of the Imperial Japanese Army and Navy for our future destiny had they won the war.

16. Didn't Japanese Americans "Cooperate" With the Army?

Summary: Because we Japanese Americans were misled by the military, even as was the United States Supreme Court subsequently, we cooperated and collaborated with the authorities because we really did not have any viable alternatives; we cooperated as patriotic Americans when we were told that "military necessity" dictated this arbitrary inhumane order and that such collaboration would result in reciprocal understanding and treatment from our Government.

An honest response to the suggestion that redress should not be provided evacuees because leaders of the Japanese American population urged "cooperation" with the Army's "requests", and almost without exception those of Japanese ancestry on the West Coast complied without protest or violence, demands some rather lengthy explanations.

In the interests of justice and history, however, I, as the then National Secretary and Field Executive of the JACL and probably the most vocal advocate of "constructive cooperation and collaboration", feel that such explanations are necessary.

As noted in a earlier section, following the attack on December 7, 1941, and for almost a month thereafter there was little actual demand for the wholesale evacuation of all Japanese, aliens and citizens alike. We citizens, of course, were aware that our alien parents, since they were never allowed to become naturalized citizens of this, their adopted country, and the land of their children's birth and citizenship, were automatically "enemy aliens" and, as such, might be subject to treatment different from that of the native-born.

Secure in Our Citizenship

But we felt very secure in the integrity of our citizenship and the Constitution of the United States. Not only had we learned in our schools the value of this special status but we were reassured in the first weeks after the Japanese enemy attack by newspaper and other accounts of official and public sentiment.

On the day after Pearl Harbor, United States Attorney General Francis Biddle, the nation's principal law enforcement officer, emphasized over national radio: "There are in the United States many persons of Japanese extraction whose loyalty to the country, even in the present emergency, is unquestioned. It would, therefore, be a serious mistake to take any action against these people."

The same mood existed in Congress too. On December 10, 1941, Congressman "Bud" Gearhart of California arose in the House of Representatives to say, in response to a message from the JACL in Fresno, California: "Mr. Speaker, it is today my privilege to transmit to the President of the United States a copy of a telegram, the original of which I have just received from an American patriot of Japanese origin (Dr. T.T. Yatabe, the first constitutionally elected National President of the JACL in 1934). Because of the warm assurance of support of our just cause which it contains, I am pleased to inform the membership and the country of its contents."

Two days later, Congressman John Coffee of Washington State asked his colleagues: "As one who has lived as a neighbor to Japanese Americans, I have found these people, on the whole, to be law-abiding, industrious, and unobtrusive. Let us not make a mockery of our Bill of Rights by mistreating these people. Let us, rather, regard them with understanding, remembering that they are victims of the Japanese war machine, as we are, with the making of the international policies of which they had nothing to do.

All informed opinion agreed that, in the early days of the conflict, when shock and resentment over Pearl Harbor was at a maximum, there was relatively little tendency to make persons of Japanese background scapegoats for the events in the Pacific. "The Open Forum" for December 20, 1941, organ of the Southern California ACLU which was especially sensitive to any acts of discrimination or violence and infringement of civil rights of minorities, reassured us with such words as: "The feelings of many people were highly wrought up, but we are happy to report that little in the way of vigilante action occurred. There were threats, angry words, and name-calling, but very few cases of assault on persons or property."

From up North in Oregon, then journalist later United States Senator Richard Neuberger reported: "...no demonstrations against Japanese residents have occurred. Governor Culbert L. Olson of California asked for tolerance in the state with the largest Japanese population. John Boettiger, the President's son-in-law, wrote in the Seattle Post-Intelligencer, 'Many of the Japanese in America are as loyal as any white Americans, and it would serve only evil purposes to cause them to suffer.'"

Chester Rowell, one of the most respected newspapermen in the country, editorialized December 13, 1941, in the San Francisco Chronicle: "...I am glad to report that, so far, there has been no evidence of anti-Japanese sentiment. For their part, Japanese loyal to the United States are organizing excellently and vigorously. Old-line Americans, under the highest quality of responsible leadership, are doing the same. The actually disloyal we leave to the FBI and the military police, to be dealt with as individuals, like any other disloyal individuals...We who know our California Japanese as individuals know what fine people many of them are."

Even as late January 1942, the Northern California Committee for Fair Play for Citizens and Aliens of Japanese Ancestry (January 26, 1942) was able to comment: "If the infrequency of reports of violence against Japanese and Japanese Americans is a fair criterion, then it must be concluded that these efforts to ensure the position of this minority have been, in the main, successful...Californians have kept their heads. There have been few, if any, serious denials of civil rights to either aliens or citizens of Japanese race on account of war. The American tradition of fair play has been observed."

A careful analysis of the hundreds of newspaper stories which were carried concerning the Nikkei from December 1941 to March 3, 1942, in the two most prominent and influential San Francisco Newspapers, the liberal Chronicle and Hearst's San Francisco Examiner, reveal that before January 22 there were only two stories that some type of evacuation should be carried out. Both of these occurred in the ten day period January 1-10, 1942. It was not until the last ten days of January that such suggestions became relatively frequent and were limited almost entirely to political figures bent on stirring up the issue and securing cheap wartime publicity.

No Military Necessity As of Early February 1942

As late as February 2, 1942,General DeWitt did not assert that "military necessity" required removal from the West Coast even of enemy aliens. Looking back, we wonder by what stroke of strategic insight did the General discover that a "military necessity" demanded the mass evacuation of citizens and resident aliens, and then only those of Japanese ancestry, in the few days between this conference and his uneasy, hasty messages to the War Department.

On February 3, 1942, Senator Sheridan Downey of California spoke over the NBC radio network in defense of the Japanese population in his state. That he did not then believe that the rights of citizens were endangered is shown by the fact that he spoke about the care that should be exercised toward the alien Japanese.

Though we at National JACL Headquarters in San Francisco were beginning to hear of political pressure building in Washington for some drastic action against the Nisei, we continued to be lulled into what was a false sense of security in our citizenship. We had heard that California's Senior Senator and long-time anti-Japanese warmonger Hiram Johnson had organized informally the members of Congress from the Pacific Coast states and had appointed two subcommittees, chaired by Senator Rufus Holman of Oregon and Senator Mon Wallgren of Washington, to consider plans for increased military strength along the West Coast and to deal with the question of enemy aliens and the prevention of sabotage, respectively.

No Evacuation Necessary, February 4, 1942

On February 4, 1942, General Mark W. Clark, representing Chief of Staff George Marshall, and Admiral Harold Stark, Chief of Naval Operations, testified before these subcommittees. Senator Holman started off the meeting by saying that the people on the West Coast were alarmed and horrified as to their persons, their employment, and their homes. General Clark said that he thought the Pacific Coast states were unduly alarmed.

Neither the General nor the Admiral thought that the Japanese population in the western states constituted a threat, danger, or hazard to the military. They both opposed a mass evacuation of the Japanese as unnecessary and undesirable.

Two Proposals To Avoid Evacuation

As can be understandable, in the face of all that we heard and read, we were not as concerned and worried as we should have been, even as early as February 1942. Still, as precautionary measures, we reached two major decisions.

In one, and the most dramatic, we proposed that we Nisei be allowed to form combat units to fight the Japanese enemy in the Pacific. Our families, especially our parents, would remain behind in their homes as hostage to our good faith and loyalty. The Army turned us down, noting that the United States did not believe in hostages or in segregated units except for Negroes. And the Army feared that in combat against the Japanese enemy, the question of identification could cause considerable confusion.

In the second, we accepted the proposals then being made by many distinguished Americans, such as General David Barrows, Presidents Gordon Sproul of the University of California and Ray L. Wilbur of Stanford University, Dr. Robert Millikin of the California Institute of Technology, John Dewey, Harry Emerson Fosdick, and the like, and urged that the Nisei be screened individually as to their loyalty, allegiance, and possible contributions to the war effort. We pointed to the British experience with hearing boards, noting that more than 74,000 enemy aliens were processed in less than six months, with less than ten percent found "potentially dangerous".

In the case of the Nisei, there were only 46,000 males residing on the Pacific Coast between the ages of 14 and 65, with many of these being too young or too old to be dangerous to American security. In other words, there were actually less than half the number that the British hearing boards disposed of in less than six months, which reduced to about three months the time that United States boards might need to screen the entire potentially dangerous Japanese, aliens and citizens alike.

Because JACL believed that the credibility of such as Dr. Galen Fisher, a distinguished theologian, Secretary of the Committee for Fair Play, and adviser to the Institute of Pacific Relations, and Miss Annie Clo Watson, Executive Director of the International Institute of San Francisco, was greater than its own, we requested them to present our suggestions in this regard to General DeWitt. He rejected it almost out of hand, claiming that time was of the essence in this "military necessity", even though it took until the end of May 1942, or about three months after Executive Order 9066 was promulgated, for the last evacuee to be lodged in some WCCA Assembly Center.

Interestingly enough, some 200 national leaders of America, representing almost every facet of our society, wrote President Roosevelt urging him to use loyalty hearing boards as a means of screening the Nisei instead of arbitrarily mass evacuating them from their homes and associations. The President failed to respond to this request.

How Could Army Mislead Us?

So, when we were told by the Western Defense Command that "military necessity" dictated our removal from the Military Zone, how could we--a tiny ethnic minority of less than 120,000, with no political connection, wealth, or "grass roots" support from the people at large--refuse to believe the Department of War?

More than two years later, when more of the facts were public knowledge concerning the true state of affairs on the West Coast, the country's Court of Last Resort, the nine Justices of the Supreme Court of the United States, also believed these same arguments, facts, and appeals. And they were not under the same urgency pressures as we were.

Generals and Colonels in full uniform, members of the Congress who constituted the Tolan Committee (Congressmen John Tolan of California, John Sparkman of Alabama, Laurence Arnold of Illinois, Carl Curtis of Nebraska, and George Bender of Ohio), Presidential Assistant Tom Clark, Assistant Secretary of War John McCloy, West Coast directors of the Farm Security Administration, of the Federal Reserve Bank, of the Federal Security Administration, WRA Director Milton Eisenhower, and others recited the grim facts of "military necessity" and urged us to "cooperate" with the federal Government in this program, with the implicit understanding that such "willing collaboration" would result in reciprocal goodwill and understanding on the part of the agencies involved, in order that the movement might be as humane and as convenient as possible.

We were warned, though, as Colonel Karl Bendestsen, Director of the Wartime Civilian Control Administration, explained in much milder terms to the Commonwealth Club of San Francisco in May 1942, that the Army had an alternative, or contingency, plan in case the Japanese American population failed to respond "properly" to Army orders.

At various meetings of the JACL leadership, we had discussed what our position, as American citizens concerned with the short-term and long-range welfare of those of Japanese ancestry in this country, had to be.

Personally, all of us were convinced within our hearts that it was the 50-year-old racism against the Japanese, now fired by greedy interests clothed in the colors of patriotism, that was really responsible for much of the drive against us. At the same time, we appreciated angry public reaction if we forced the Army into bloody actions,with troops with bayoneted guns and grenades and possibly even tanks moving into the so-called Japan towns, to move us out of our homes and possessions by force.

We agreed, as difficult and onerous as it was, because we could not come up with my viable option, to agree to the evacuation or removal movements, for that was the only issue at the time, if it were for reasons of "military necessity".

None of us thought about possible permanent, or semi-permanent imprisonment, because such exigencies were not mentioned even casually by the Government, the Army, or any of our group of non-Nisei friends who informally made up our special, emergency advisory group.

JACL Statement

That is why, on behalf of JACL, I made the following statement to the Tolan Committee at its first San Francisco hearing on February 21, 1942:

> ...We have been invited by you to make clear our stand regarding the proposal for all Japanese on the West

Coast. When the President's recent Executive Order was issued, we welcomed it as definitely centralizing and coordinating defense efforts relative to this evacuation program. Later interpretations of the Order, however, seem to indicate that it is aimed primarily at the Japanese, American citizens as well as alien nationals. As your Committee continues its investigations in this and subsequent hearings, we hope and trust that you will recommend to the proper authorities that no undue discrimination be shown to American citizens of Japanese descent.

Our frank and reasoned opinion on the matter of evacuation revolves around certain considerations of which we feel both your Committee and the general public should be apprised. *With any policy of evacuation definitely arising from reasons of "military necessity" and national security, we are in complete agreement*. (emphasis supplied) As American citizens, we cannot and should not take any other stand. But also, as American citizens believing in the integrity of our citizenship, we feel that any evacuation enforced on ground violating that integrity should be opposed.

If, in the judgment of the military and Federal authorities, evacuation of Japanese residents from the West Coast is a primary step toward assuring the safety of this nation, we will have no hesitation in complying with the necessities implicit in that judgment. But, if on the other hand, such evacuation is primarily a measure whose surface urgency cloaks the desires of political or other pressure groups who want us to leave merely from motives of self-interest, we feel that we have every right to protest and to demand equitable judgment on our merits as American citizens. (emphasis supplied)

In any case, we feel that the whole problem of evacuation, once its necessity is militarily established, should be met strictly according to that need.

...I now make an earnest plea that you seriously consider and recognize our American citizenship status which we have been taught to cherish as our most priceless heritage.

At this hearing, we Americans of Japanese descent have been accused of being disloyal to the United States. As an American citizen, I resent those accusations and deny their validity.

We American-born Japanese are fighting militarist Japan today with our total energies. Four thousand of us are with the armed forces of the United States, the remainder on the home front in the battle of production. We ask a chance to prove to the rest of the American people what we ourselves already know: That we are loyal to the country of our birth and that we will fight to the death to defend it against any and all aggressors.

We think, feel, act like Americans. We, too, remember Pearl Harbor and know that our right to live as free

> men in a free Nation is in peril as long as the brutal forces of enslavement walk the earth. We know that the Axis aggressors must be crushed and we are anxious to participate fully in the struggle...
>
> In this emergency, as in the past, we are not asking for special privileges or concessions. We ask only for the opportunity and the right of sharing the common lot of all Americans, whether it be in peace or in war...

Even as the courts later, including the highest tribunal in the land, were misled and deliberately misguided to accept the concept of "military necessity", so were we too in the spring of 1942.

Were the facts we now know known then, our response might very well be very different indeed.

But, because we had faith in our Government, when we were told that "military necessity" required our "constructive cooperation and collaboration", reluctantly and regretfully we complied with the harsh demands of military dicta.

Non-Violent Patriotic Demonstration

Even General DeWitt was forced to acknowledge the importance of the "cooperation" extended by the evacuees, saying in his Letter of Transmittal of his Final Report to the Secretary of War: "To the Japanese themselves great credit it due for the manner in which they, under Army supervision and direction, responded to and complied with the orders of exclusion."

To this day, many throughout the world, marvel at the disciplined conduct of the evacuees, almost without exception paying tribute to it as "the most remarkable demonstration of nonviolent patriotic cooperation with an unpopular and unconstitutional movement and one which demands the plaudits of the American people".

This was before Watergate and all it means. It was before Abscam, Vietnam, and the exposures of the excesses and abuses of the FBI, CIA, etc. It was in a time of old-fashioned patriotism and heartfelt inspiration from the Flag.

So, though times have changed and allegiances too, rather than denying redress to us, should not our "collaborativa cooperation" be recognized and redeemed in order that in another age, when our country and our ideals face survival, other individuals and minority groups will again voluntarily sacrifice and endure that this land, with all its mistakes and weaknesses, will remain man's last best hope.

As for detention, incarceration, imprisonment--call it what you will--that was never contemplated or made known when JACL agreed to the initial evacuation.

Had we done otherwise than "cooperate constructively", I fear that our status as citizens would be far less secure than it is. And, in spite of the criticisms and outcries as to what we might have done as an organization, no one has come up with an idea and/or concept that would have been more pragmatic, realistic, and beneficial to the whole population than the course of action that we ultimately agreed to.

And, if any progress is made, or implementation of S. 1009 completed, there can be no doubt that it was JACL's fundamental decision and the remarkable exploits of the Nisei in uniform in World War II that will be jointly responsible.

Detention Camps Not Contemplated

Because eviction and imprisonment are used so often, one in conjunction with the other, many have the impression that General DeWitt's public proclamations intended that the evacuees remove themselves from their homes and associations on the West Coast and proceed to find homes in interior America.

The fact is that both the War Department and General DeWitt never contemplated the need or the necessity for the semi-permanent camps in their early thinking. They envisioned that the evacuees, possibly like refugees from war zones, would wander away on their own and relocate and resettle themselves as well as they could.

In any event, on February 19, 1942, President Franklin D. Roosevelt issued Executive Order No. 9066. Under terms of this extraordinary executive fiat, unprecedented in American history, 11 days afterwards, on March 2, Commanding General John DeWitt of the Western Defense Command designated the western half of Washington, Oregon, and California, and the southern portion of Arizona as a "military area" and announced that all persons of Japanese ancestry would eventually be moved from that area "in the interest of 'military necessity'".

In his Final Report on the evacuation, which was published late in 1943, General DeWitt took occasion to define what he meant by "military necessity" in this context. "Essentially," he wrote, "'military necessity' required only that the Japanese population be removed from the coastal area and dispersed in the interior, where the danger of action in concert during any attempted enemy raids along the coast, or in advance thereof as preparation for a full scale attack, would be eliminated."

Secretary of War Stimson wrote General DeWitt on February 20, the day after Executive Order 9066 had been issued, indicating that "removal of individuals from area in which they are domiciled should be accomplished gradually so as to avoid, so far as is consistent with national safety and the performance of your mission, unnecessary hardship and dislocation of business and industry."

And, perhaps most important in the context of this addendum, the Secretary called upon the General to take "fullest advantage...of the voluntary exodus of individuals and of the facilities afforded by other government and private agencies in assisting evacuees to resettle."

This comment, we now understand, was in anticipation that the President would create an independent agency, the War Relocation Authority, to "take over" the administration of the evacuee program after the military had completed the initial phase, movement from the West Coast. On March 12, the WRA was so established.

Parenthetically, it may be stated that because the evacuees had "constructively cooperated" in their own evacuation, civilian authority would now "take over". Had there been protests, violence, or other damaging or dangerous actions against the Army, it is likely that the military would have retained complete control, with all that implies. This is another positive result of JACL leadership. At least, so some in the WRA have informed us.

On March 2, General DeWitt issued Public Proclamation No. 1, designating the Pacific Coast exclusion area. In an official statement to the press, DeWitt admitted that "Immediate compulsory mass evacuation of all Japanese is impractical. Eventually, orders will be issued requiring all Japanese, including those who are American-born, to vacate all of Military Area No. 1. Those Japanese...who move into the interior out of this area now will gain considerable advantage and in all probability will not again be disturbed."

Why Voluntary Evacuation Failed

WRA in its final report, entitled "WRA: A Story of Human Conservation", comments on these DeWitt statements:

> For reasons, which have never been made clear to WRA, General DeWitt did not see fit to prepare the interior States for the voluntary migration which he had thus encouraged or to explain adequately that the people of Japanese descent were regarded as a hazard only in the coastal zone. Fortunately for the welfare and stability of the western United States, only a comparatively small number of Issei, Nisei, and Kibei--about 9,000 altogether--responded to the General's urging; and approximately half of these...merely moved into the eastern or noncoastal half of California from which they were later evacuated directly into WRA centers. Those who attempted to cross over into the interior States (on their own) ran into all kinds of trouble. Some were turned back by armed posses at the Nevada border; others were clapped into jail and held overnight by panicky local peace officers; nearly all had trouble buying gasoline; many were greeted by "No Japs Wanted" signs on the main streets of the interior communities; and a few were

> threatened, or felt that they were threatened, with possibilities of mob violence...

From the JACL viewpoint, this was another presumed promise that DeWitt failed to keep, i.e., to provide adequate military escort protection for all evacuees as they voluntarily left for eastern population centers and farming areas in search of new homes,new work, and new opportunities. It also puts to doubt the arguments advanced by the General subsequently that "protective custody" was a primary factor in his decision to evacuate the West Coast Japanese.

By March 27, the critical "voluntary migration" program was going so badly that the Western Defense Command issued the so-called "freeze order", effective two midnights later, which prohibited all of Japanese origin in Military Area 1 from leaving that zone until ordered to do so by military officials. In the meantime, the President signed Public Law 503, making it a federal offense to violate any Army order issued under authority of Executive Order 9066, with authorized penalties being fine or imprisonment, or both. Its purpose, Director Eisenhower explained, was to put the program on a "planned and orderly" basis.

Since "voluntary migration"--voluntary in the same sense as Army "volunteers" are arm-twisted and intimidated into accepting certain chores or duties--was a quick and dismal failure, with Colonel Bendetsen in charge, the WCCA took over fair grounds, race tracks, livestock pavilions, and other such facilities and crudely but speedily converted them into temporary Reception Areas termed Assembly Centers.

These 15 Assembly Centers, so-called, were never intended for human habitation, especially for women, children, infants, sick, handicapped, and the elderly. Indeed, we have heard that most of the them were condemned for the use of Army men recruits by public health officers.

In the meantime, the Army began to build the ten semi-permanent prison camps for the evacuees--two in California, two in Arizona,two in Arkansas, and one each in Utah, Idaho, Wyoming, and Colorado.

These were more like the training camp facilities constructed for male Army recruits and were not very well suited to family units,for the elderly, for the sick and the handicapped. There was practically no privacy and communal eating and showering were not conducive to the maintenance of the strong family ties that had been developed in the Japanese communities.

Discipline broke down and the established wage scales of $12, $16, and $19 a month often allowed children to "earn" more than did their parents. And, WRA personnel, often less skilled and experienced than those whom they supervised, such as doctors, dentists, nurses, and even teachers, were paid the going wages and salaries.

Lobbying for Continued Civil Control

As bad as the WRA camps may have been--and I do not dispute the testimonies presented to the Commission--imagine how much worse they could have been had the military retained control of this wartime operation, with officers such as DeWitt and Bendetsen in charge, with perhaps trigger-happy veterans of the death march at Bataan, for example, as MPs and perimeter guards.

Several times in 1942 and early 1943, I participated in the lobbying to keep civilian control over the evacuee prisons, since many members of the Congress at that time thought that the WRA "was soft on the Japanese" and coddled them at the expense of a general public at war. I remember how magnificent Dillon Myer was, as were his top staffers, in answering the accusations of these politicians and racists, in defending the loyalty and the conduct of the evacuee population, and in advocating better understanding and treatment of Japanese American after the end of hostilities. I recall particularly WRA's "victories" over the military appropriations subcommittees of the House and Senate Appropriations Committees which tried to drastically reduce operating expenses, over the Military Affairs Committees of the Congress that tried to transfer the WRA administrative responsibilities back to the Army, and over the House Un-American Activities Committee which charged waste and coddling of the evacuees and alleged "Communist-like" administration of the camps.

That they were able to successfully retain administration of these WRA camps and to administer them as they did, is a tribute to the American tradition of civilian dominance over the military, even though in this instance both the evacuees and the politicians and bigots severely criticized the WRA.

From time to time, one hears that it was their understanding that the WCCA and WRA centers were supposed to be "havens of safety" for the evacuees, from which they could leave or reenter at will. The Government would provide food, shelter, clothing, and even some employment, such as weaving camouflage nets, which would aid the war effort in these refuges.

If they wanted to go out and help harvest crops, they would be assured decent housing and the prevailing wage. If they wanted to further their education, the WRA would help find appropriate colleges and universities and help provide scholarship money, etc. In other words, these would be like "vacation camps", which a grateful Government would provide for having evacuated them.

These were but dreams that were "sold" to some of us, but which quickly disappeared when the "voluntary evacuation" program broke down so quickly and the WCCA and the WRA had to build the camps that they did. Even the United States, with all its riches, could not afford such luxury in wartime.

17. Why Did Evacuees Volunteer For Military Service?

Summary: To assure for ourselves and our posterity an honorable and equal place in America as Americans, to be entitled to the presumptions of loyalty and allegiance which is the due of all citizens, and to enjoy fully the equality, dignity, and opportunities that are the birthright of every American, we volunteered for military duty with the very same Army ironically that was responsible for our World War II adversities in order to achieve our aspirations, objectives, and dreams as patriots worthy of such hopes.

Since it was my lot to be the National Secretary and Field Executive for the Japanese American Citizens League when the Japanese enemy attacked Pearl Harbor, I was subjected to many press conferences and interviews when the views of Americans who also happened to look like the pilots who bombed the Army, Navy, and Air Corps facilities in and near Honolulu, were solicited.

Though 45 years have speedily passed, I can still easily remember that one of the single most often questions had to do with my loyalty. In the first few weeks after December 7, 1941, the questions were friendly, sympathetic, and understanding. After about the first of February 1942, though, the questions became more accusatory, more suspicious, and more unbelieving, even when they were correspondents to whom I had spoken weeks earlier and in amicable terms. Almost without exception, they seemed to be asking a rhetorical question and anticipated my responses with follow-up inquiries.

"Okay, so you claim that you're as American as we are. Now, prove it!" When I protested, they would invariably emphasize that other immigrant groups and their children had fought in the wars that the United States had engaged in and had earned the right to be called Americans. How about me, and what about the other "Japs"?

When I tried to explain that Selective Service would no longer induct Japanese Americans, most shouted that the action showed that the Army had no faith or trust in us either.

Then, as the public, political, agricultural, and commercial demands grew for our evacuation, alien and citizen alike, I began to understand the necessity for military service in order that we could respond to our loyalty as individuals and as the Japanese American minority with battle stars, Purple Hearts, and other combat decorations. For some unaccountable reason, once you had seen service and could prove it, automatically you were a loyal American and none could question your loyalty or your allegiance.

I also quickly learned that the fact that if one was not a GI with a Selective service deferment, your loyalty and your manhood could be questioned. And, once we as Japanese Americans were evacuated and detained in interior prison camps, all but the most knowledgeable considered us as some kind of criminal, "otherwise the Government wouldn't have put you in jail".

From these and similar lessons in public attitudes, I became determined that at the first opportunity the JACL and I had to move out front to demand the right to serve our country,and in combat to boot. So, from my first visit to Washington after the evacuation on, I began to lobby the War Department, the White House, and the Military Affairs Committees of the House and the Senate to direct the Selective Service to reopen the draft to us.

The Fight To Serve

While practically all the government and private books and papers on Nisei World War II military service extoll the heroic battle record of these same troops, none that I am familiar with begins to reveal the difficult and hard fight that we American Japanese GI volunteers had to wage in order to gain the opportunity to serve our country in war against the common enemies.

Prior to December 7, 1941, Americans of Japanese ancestry were registered, classified, and inducted as were all other qualified citizens. In fact, during the first year of the Selective Training and Service Act of 1940, from November 1, 1940, to November 1, 1941, 3,188 Nisei had been inducted into the Army by Selective Service.

Soon, thereafter, Army commanders in the field were granted discretionary authority to release, reassign, or retain the Nisei then in their respective commands. As I remember it, about half of those then in the military were discharged "for the convenience of the government", while most of the other half were assigned to non-combatant duty, including menial tasks and responsibilities. It was under this discretionary authority that the Japanese Americans then in the two National Guard Regiments in the then Territory of Hawaii were discharged "for the convenience of the government", even though many of them had performed in the most exemplary manner before, during, and immediately after the attack on Pearl Harbor.

Also, about this same time, the War Department advised Selective Service that it should no longer induct any more Nisei into the military.

Early in 1942, Selective Service decided to reclassify all qualified Japanese Americans into Class IV-C, which was originally established for declarant and nondeclarant aliens but soon became known as the classification for "enemy aliens". Of course, we Nisei loudly decried and denounced that classification which denied our citizenship and strongly requested that we be classified and treated as was our due as native-born Americans. By coincidence, the Commanding General of the Western Defense Command about this time was posting his various "evacuation" orders in which he too tried to deprive us our then nominal citizenship by describing us as "nonaliens".

In the meantime, to try to test some of the implications, the War Department decided to recall those "discharged" National Guardsmen in Hawaii. When it was found not possible under the then wartime circumstances to assign these troops as individuals to various organizations, it was decided to form them into a segregated "oversize" battalion of infantrymen, the only "segregated" outfit in the Army except for blacks, then called Negroes.

In the summer of 1942, the 1,300 Hawaiian Japanese Americans were sent to Camp McCloy, Wisconsin, and were designated as the 100th Infantry Battalion (Separate). There, in training, they proved themselves to be superb infantrymen.

Voluntary Service Finally Approved

After closely monitoring the development of the 100th, and in response to the tens of thousands of demands in the form of letters and resolutions, the Army finally agreed to accept qualified American Japanese, but only on the basis of individual volunteers after special loyalty clearance on February 1, 1943. Then President Franklin D. Roosevelt issued a statement, noting that "The proposal of the War Department to organize a combat team consisting of loyal American citizens of Japanese descent has my full approval. The new combat team will add to then early 5,000 loyal Americans of Japanese ancestry who are already serving in the armed forces of our country. This is a natural and logical step toward the reinstitution of the Selective Service procedures which...were disrupted by the evacuation. No loyal citizen of the United States should be denied the democratic right to exercise the responsibilities of his citizenship, regardless of his ancestry. The principle on which this country was founded and by which it has always been governed is that Americanism is a matter of the mind and the heart; Americanism is not, and never was, a matter of race or ancestry."

Thus, we Nisei had to fight the same Army that suspected our loyalty and had incarcerated most of us in virtual prison camps for the chance to serve in that same Army.

Volunteering for that Army, though, was not popular in the camps. Many insisted that, after what the Army had done to us and our families, it was neither right nor appropriate that we should volunteer to fight in that same Army. More, though, declared that if the Army would restore their constitutional and other rights and allow their families to return to their former homes and associations on the West Coast, they would gladly volunteer and fight for their country. Some were opposed to the segregated status of the combat team, suspecting that the Army would use Japanese Americans as "suicide" troops, following the suggestions of some politicians that the Army ought to resort to this tactic as a means of "getting rid of the Japan problems". And, there was that Louisiana Congressman who introduced a bill to sterilize young Japanese American youth.

Moreover, unlike the average American, we could not volunteer and choose the branch of service we preferred. The Navy and the Marines, as well as the Coast Guard and the Merchant Marine, would not accept us Nisei. Neither would the Air Corps. And, even the Army would allow us to volunteer for duty only as combat infantrymen, and then in a segregated unit, commanded almost entirely by Caucasian or white officers. Even the cadre for training could not be the trained National Guardsmen of the 100th; the cadre noncoms were Nisei selected from various units to which they had been assigned, with few with any combat or infantry training at all.

The great majority of volunteers were, in fact, of the Buddhist faith, even though for personal reasons best known to themselves they identified their religious preference as "None" or "Christian" or "Protestant". The Army, however, would yield to our requests only to the extent of providing us with two Congregational chaplains of Japanese ancestry.

In the so-called Army Ground scores, I believe they were called, a mark of 110 or more made a GI eligible for Officer Candidate School. We recruits averaged out at 116. But, since we had volunteered for combat, the Army selected fewer than five to go on to OCS. This meant that almost all of our officers of Japanese ancestry were combat commissions, especially in the 442nd.

Nisei Gis With Language Capabilities Sent To MIS

And, even though they volunteered for action specifically against the Nazi enemy Germans, those Nisei who could read, write, and speak Japanese to a limited degree were almost automatically transferred to the Military Intelligence Service, to serve against the Japanese enemy in the Pacific.

This was another of many contradictory policies. More than a month before the outbreak of war in the Pacific, a small, select "secret" school was established at the Presidio in San Francisco for the avowed purpose of training young Nisei who could read, write, and speak some Japanese to serve against the land of their parents and ancestors and in some cases possibly against brothers, uncles, and family friends who had not emigrated to the United States, in combat intelligence where the United States military was weakest in its war preparations against the Japanese enemy.

Even as the Western Defense Command was accusing Nisei attending Japanese language schools on the West Coast as being dangerous to the national security and at least pro-Japan in their attitudes, thereby requiring their removal as a measure of military necessity, MIS officers were desperately trying to find Nisei conversant enough in Japanese to enlist in their special training program. In spite of the fears of the Western Defense Command, it was learned that less than five percent of the Nisei on the West Coast were experienced enough in Japanese to qualify for the lowest level of MIS training.

While the Army privately but vigorously solicited the enlistment of qualified Nisei and Kibei for their special knowledge, they would provide at best noncommissioned ranks for these volunteers, while commissioning non-Nisei language officers who were just beginners. Yet, in the field these Nisei intelligence GIs were considered so valuable and important that in most instances several regular soldiers were ordered to guard them against possible mistaken identities on the part of their fellow American troops.

Though the Navy, Marines, and Air Force would not accept Nisei into their ranks, they did welcome for temporary duty these Nisei MIS specialists. George Inagaki, for example, was the personal interpreter for Admiral Chester Nimitz in the battle for Okinawa, the last great engagement of the Pacific War.

Subsequently, because of the high regard he developed for the Nisei in MIS and the Allied Translator and Interpreter Service, when he became the Chief of Naval Operations after the war, he opened up the United States Naval Academy at Annapolis, Maryland, and all branches of the Navy, including the Marines, to qualified Japanese Americans.

At this point, it might be well for us in the 442nd to pay our special respects and tribute to our fellow American Japanese who served our nation so valiantly in World War II in the Pacific Theater and in the China, Burma, India Theater. Since their activities were so important that most still remain classified "secret", they did not receive the publicity or plaudits that they so richly deserved. Still, in my humble opinion and shared by most--if not all--in the 442nd, they contributed far more to the ultimate surrender of the Japanese militarists than we did to Allied Victory in Europe.

Much more important, though, they put to the lie the canard that we in Europe could not, that Americans of Japanese ancestry would, and did, fight as courageously against the Japanese Imperialists as we did against the German Nazis, all to the credit of the American system.

"We're In The Army Now"

Now, let us return to the activation of the 442nd. The volunteers from Hawaii, where those of Japanese descent represented one-third of the territorial population and were never subjected to the legal, social, and economic persecution that we on the mainland suffered as an ethnic minority, were shipped over as a group and went into training right away. We on the mainland, though, came in almost individually or in small groups after induction near the concentration camps, United States style, to which our families and we were herded earlier. We represented less than two percent of the population of the three West Coast States of California, Oregon, and Washington even when counting all of us who resided in the then 48 States. And we had suffered racism, discrimination, and warmongering for more than half a century of our saga in America.

Inevitably there were some real troubles and clashes between the "butaheads" (pig heads) of the Islands and the "kotonks" (empty heads; when mainland heads were tapped they sounded like coconuts hanging together) of the continental West Coast. Initially, these were terms of derision but they soon developed into descriptions of mutual endearment and brotherly affection as we lived, trained, ate, and played together, suffering the humbling "equality" and vicissitudes that only military training can bring, and as we learned the problems of the other, we confirmed in ourselves the common belief that all of Japanese origin need to prove beyond all shadow of doubt that we are--and were--loyal and dedicated American citizens entitled to all the rights, privileges, and opportunities of such 100 percent citizenship.

When we "butaheads" and "kotonks" first arrived at Camp Shelby, in Mississippi, we were given shoulder patch emblems that showed a yellow arm holding high a short sword, with the words "Remember Pearl Harbor" as our team motto. Naturally, we protested loudly, with the Army substituting the shoulder patch that is now a signal of honor: a white arm holding aloft the torch of liberty against a background of red, white, and blue. And we chose our own battlecry: "Go For Broke", now a most honored and recognized slogan in American military annals and a legitimate contribution to Americana.

Another major controversy was over the designation 442, for the number four represents in Japanese the sign of death. This "double whammy", as it were, seemed to those who worried that we might be wasted as "suicide troops", an insidious symbol of the Army's true intentions. On the other hand, it was argued that this number that came up was purely coincidental and could be interpreted as meaning "death to our enemies". The consensus was to keep the 442nd identification and demonstrate by our actions in battle that the 442nd would convey the message of death and defeat to the enemy.

There were racial and other tensions with other American GIs who simply could not understand why "Japs" were allowed in the same Army with them. Initially too, the restaurants, stores, theaters, and bowling alleys in nearby Hattiesburg treated us with disdain and often refused us service. Those among us who had wives and children living in close-by suburbs faced a most unusual problem: Mississippi had a strange law requiring whites to go to one set of schools, Negroes to another, and Chinese to still another. A fourth school system had to be set up to take care of the young Sansei and Yonsei students.

As we trained, the 100th Battalion visited Camp Shelby and rumors were rampant that it would be merged with the 442nd for final training and maneuvers before we all left together for combat in Italy. The younger GIs of the 442nd from Hawaii were especially hopeful that they would be reunited with their older brothers and friends with whom they had grown up in the Pacific Territory.

But the Army wanted to see how the Nisei from Hawaii would react in actual warfare, particularly since they had not been subjected to the tragedy of evacuation, exclusion, imprisonment, and relocation that had been the hard lot of the mainland Nisei.

So, the 100th was shipped off to North Africa where it was attached to the 34th "Red Bull" Division of Iowans and Nebraskans. Later, in battles at the Volturno River, Rapido River, Cassino, Anzio beachhead, and the liberation of Rome, the 100th first earned the respect of their fellow Americans as the Purple Heart Battalion.

There is no doubt in my mind that, had it not been for the tremendous battle record achieved by the 100th Infantry Battalion, we in the 442nd might not have been sent into combat. There were already many racists and hate-mongers in California and elsewhere, fearful that the 442nd volunteers might duplicate the gallant feats of the 100th, who were then proposing that the Army relegate the 442nd to training and other duties in the Interior Zone, that is in the United States, or "break up" the combat team and assign its members to logistical support organizations overseas, etc.

Selective Service Restored

The exemplary training records of both the 100th and the 442nd caused the War Department and the Selective Service to reinstate normal registration and classification procedures for those of Japanese ancestry, inducting those who qualified even though most were still involuntary inmates of the WRA camps.

This military service requirement was reinstituted in the fall of 1943. The constitutional rights of the inductees and their families, however, remained abridged.

Just after completing maneuvers in Texas and Louisiana in final preparations for embarkation to the combat zone, many of us suffered our most humiliating experience as American GIs. Many, including one of my four brothers in the 442nd, wanted to return to camp to say "goodbyes" to their mothers and family members, for too many had premonitions of never returning alive to see their loved ones again.

Before they could leave, they had to secure clearances from the Western Defense Command, of the same Army to which they belonged. When they arrived at the Defense Command's jurisdiction, they were given escorts of Military Police wearing the same uniform as they. At the point of entry into the detention camps, while their parents and friends often looked on, they were body searched, again by MPs, some with lower ranks than those they were inspecting. My brother was so humiliated that he simply turned around and left the area, not seeing my aged mother at all. That brother was KIA and today lies buried in Arlington National Cemetery.

442nd Goes Into Combat Action

In any event, in May 1943, the 442nd was finally sent overseas, minus its First Battalion. The 100th had suffered so many casualties in Italy that it required as replacements our First Battalion. And, just north of Rome, they joined the 442nd as the 100th Battalion of the 442nd Infantry Regiment.

The 442nd Combat Team was now composed of the 442nd Infantry Regiment, the 552nd Field Artillery Battalion, the 232nd Combat Engineer Company, and the 206th United States Army Band. It too was attached to the 34th Infantry Division.

The 442nd first saw combat just north of Rome on Hill 140, then moved northward to liberate Belvedere, Luciano, Leghorn, and the Arno River in Italy as part of the Fifth Army under General Mark W. Clark. Then, as part of the Seventh Army under General Jacob Devers, attached to the 36th "Texas" Infantry, the 442nd participated in the invasion of Southern France and the drive north into the German heartland through the Vosges Mountains of northeastern France that had proved so troublesome to the American Expeditionary Forces in World War I, liberating the key rail and truck center at Bruyeres and then rescuing the Lost Battalion of the 141st Infantry Regiment of the 36th Texas Division. In that rescue effort, the 442nd lost so many troops that it was placed in reserve to guard the Maritime Alps between France and Italy while replacements from stateside were coming over.

Recalled then to Italy to spearhead the final drive to victory on that rugged peninsula, the 442nd, minus its Field Artillery, drove on to La Spezia, Massa, Carrara, and Genoa, bringing to a close the Italian "under belly" campaign that never was provided the necessary arms and men to destroy more quickly the withdrawal genius of the German General Kesselring who took advantage of the rugged terrain to slow the Allied advance of the Fifth Army. In this last campaign, the 442nd was attached to the 92nd Buffalo Division, the segregated Negro Infantry organization which served in the European Theater.

In addition, it should be noted that the anti-Tank Company was attached to the 517th Parachute Regimental Combat Team for the glider invasion of Southern France and, after V-E Day, various components of the 442nd served in the Allied Occupation of Austria.

Naples-Foggia, Rome-Arno, Southern France, Northern Apennines, Rhineland, Central Europe, and Po Valley were the official designations for the seven campaigns in which the 100th and the 442nd participated with such distinction. The 100th Infantry fought as a separate entity only in the Naples-Foggia and part of the Rome-Arno campaigns. Thereafter, it was the 100th Battalion of the 442nd Infantry Regiment.

Of more than passing interest--to me at least--is that the 552nd Field Artillery Battalion, after being detached from the 442nd and participating in the Seventh Army's ultimate drive into Germany itself, was the first American troops to reach the infamous Dachau genocide camp and to begin to release its Holocaust victims.

What irony, and what implications, that GIs from American-style concentration camps helped liberate the near--dead of one of the most notorious concentration camps of Hitler's "final solution" to the so-called "Jewish problem" of Nazi tyranny.

Was the Price Too High?

In some two and a half years of some of the most vicious fighting in the Mediterranean and European Theaters, the 100th and the 442nd Infantry together earned a total of some 18,143 individual decorations, together with the impressive unit citations mentioned earlier. The total included one Medal of Honor, 52 Distinguished Service Crosses, 588 Silver Stars with 28 Oak Leaf Clusters in lieu of additional Silver Star medals, 5,200 Bronze Stars, with 1,200 Oak Leaf Clusters, 22 Legion of Merit medallions, 19 Soldiers' Medal, 14 Croix de Guerre, several Italian decorations for military valor, and other official decorations, citations, and awards.

But the most touching and remembered is a small silver plaque purchased by the rescued Texans out of their own pockets, engraved with the Army ensignia for the 141st Infantry Regiment, the 36th Texas Division, and the 442nd Infantry Regiment, and with the succinct words of gratitude: "442nd Infantry Regiment--With Deep Sincerity and Upmost (sic) Appreciation--For the Gallant Fight To Effect Our Rescue--After We had Been Isolated for Seven Days--1st Bn, 141st Infantry Regiment--Biffontaine, France--From 24th to 30th October 1944". The rescued Lost Battalion GIs also honored the 442nd by designating all of us as Honorary Texans.

But, in winning these many decorations and citations, the volunteers of the 442nd paid a tremendous price. As Vinegar Joe Stilwell, a general's general, put it: "Japanese American soldiers bought an awful hunk of America with their blood."

The price that just the men of the 442nd paid as measures of their devotion to America was in a casualty rate of some 300 percent of its original regimental strength, paid off in the 680 killed in action and numbering 9,486 Purple Hearts, many with more than one and some with as many as four Oak Leaf Clusters, for combat sustained wounds and injuries.

That we of the 442nd and MIS were willing to undergo the special discriminations of the Army simply to be accepted by the military and to suffer the great losses which we did both in Europe and the Pacific as volunteers, was because we wanted to demonstrate under the most adverse and difficult of situations that the loyalty of the American Japanese is as dedicated as any.

Were we in the 442nd deliberately used as "suicide" troops, as expendable personnel, as some have suggested on the basis of our extraordinarily high casualties in wounded and killed in action? Or,did we consider ourselves as Kamikaze troops, willing as did so many Japanese soldiers to destroy ourselves deliberately in attempts to defeat the enemy?

As to the latter, there is no doubt in my mind that we Nisei GIs valued our lives and would not deliberately plan to be killed in order to take a certain objective. We were willing to "Go For Broke" to achieve military goals, but that did not denote any lack of respect for human life, whether on our own part or that of the enemy. We were willing, as the record so clearly shows, to risk our lives when necessary to gain a particular objective but not to take unnecessary gambles. While it was vital that we accomplish our purpose in the military, it was even more important that we survive in order to assure that what we fought for would not be ignored, overlooked, or forgotten in the peace to follow.

As to the former, that the Army diabolically used us as "suicide" troops, or even as "expendable" individuals, I would protest most vehemently. As cruel, inhuman, and arbitrary as the Army may be at times, as it was in 1942 in its relations with the Japanese population of the West Coast, the armed forces of the United States would never resort to such uncivilized and barbaric behavior. Such depravity is not in the American tradition, even in wartime.

My personal belief is that the 442nd was committed to so many dangerous missions, such as spearheading an Army advance or going to the relief of endangered American troops, because the commanding generals had such great confidence and high respect for our capabilities and spirit, which--in one sense--could be considered a rare compliment to us and our battle record, especially since a few in the War Department who had so much to do with our evacuation and subsequent agonies were not inclined to allow us our vindication as red-blooded Americans.

The Final Reports of the Selective Service System, Special Groups, issued in 1953, includes a section on Japanese Americans. In the concluding paragraphs entitled "Recognition Well Earned", the Selective Service declared that:

> Over 25,500 registrants of Japanese extraction were processed by Selective Service during World War II. More than 21,000 were inducted. In the light of the total number who served in the Army, even considering the size of the Japanese American population group, these figures are impressive. Nor can statistics measure the quality

> of patriotic service rendered by Nisei citizens, only one generation removed from the rice paddies and temples of an Oriental island empire.
>
> On July 15, 1946, President Harry S. Truman reviewed elements of the 442nd Infantry Regiment, known as the "Christmas Tree Regiment" because of its many decorations. This unit (which included as its First Battalion the original 100th Infantry Battalion) had participated (in two and a half years) in seven major campaigns in Italy and France (including two beachhead assaults), received seven Presidential Distinguished Unit Citations (plus 36 Army Commendations, 87 Divisional Commendations, and Meritorious Service Plaques for its Service Company and its Medical Detachments), and earned 18,143 individual decorations...
>
> In affixing the Presidential Unit Banner to the colors of the 442nd Infantry Regiment, President Truman said, "I think Americanism is not a matter of race or creed, but of the heart. You fought, not only the enemy, but prejudice--and you won".
>
> Altogether 33,300 Nisei, more than half from the continental United States, served in World War II, almost equally divided between Europe and the Pacific. Among the Divisions to which the 442nd was attached were the Thirty-Fourth (Red Bull) (in the Fifth Army in Italy), the Thirty-Sixth (Texas Arrowhead) (in the Seventh Army in France), and the Ninety-Second (Buffalo) (in the Fifth Army in Italy). Selective Service may take pride in the part it played in the making of such soldiery.

Was the price we paid, again in casualties and killed in action, too high? Kats Kunitsugu, once a youngster volunteer who fought with the 442nd, now a much respected journalist, businessman, and city planner in Los Angeles, put it this way: "The Nisei soldier's answer to prejudice was to turn the other cheek. To the Vietnam generation, for whom rights go before obligation, the price paid by the 442nd may seem too high. But never let us forget that the price was paid, and we the survivors and the ensuing generations of Japanese Americans owe the boys a debt of gratitude for their sacrifices that can never be adequately repaid."

For me, and others of goodwill, all Americans owe an eternal debt to the 442nd, for no price is too high to pay for dignity, freedom, and opportunity., We evacuees who had lost these attributes of Americanism in World War II know and appreciate their value. And we shall live in and with our lives that "Go For Broke" spirit.

It is also up to this Subcommittee, and this Congress, to make certain that the price we paid on the battlefields of World War II is not in vain; that while the cost of freedom is never cheap, Congress will redeem those willing to pay the price with their just rewards, in this instance enactment of S. 1009.

18. Isn't A "Bad" Precedent Being Established?

Summary: It is our sincere belief that a very "good", and not a "bad", precedent for the consideration of questionable constitutional issues and major actions being taken in times of great crises and emergencies is set by enactment of S. 1009, which will establish a public policy that all such decisions are subject to the payment to potential victims of appropriate and adequate compensation by way of redress for abuses and/or damages resulting therefrom; in other words, there is to be a "price tag" that will have to be "paid" for every action that violates acceptable standards of conduct and morality insofar as human and civil rights are concerned.

Following oral arguments in the Hohri Class Action suit on April 20, 1986, before the Supreme Court of the United States, in reply to a question as to the reason he opposed the Commission's monetary compensation proposal (and he was the only one of nine to do so, while agreeing with all its other findings and conclusions), Congressman Lungren of California responded over national television that he felt such restitution would establish a "bad" and "dangerous" precedent for those who had or would have past, present, and future grievances against the Government. Or, they might be activists for an unpopular cause or demonstrators and/or protestors of some supposedly government action which they considered unlawful, unconstitutional, and/or against the public interest.

If we desired, I believe that we could draw clear distinctions between what we endured and what other minorities suffered. But, frankly, though we realize that no amount of money could ever compensate us for what we lost, not only in property and physical and mental wellbeing but in terms of dignity, self-respect, and honor, we are very much in favor of symbolic monetary redress.

Why, for example, were we of Japanese ancestry on the mainland so disloyal to our country that the Army had to place us behind barbed-wire enclosed prison camps, while they and their fellow Japanese Americans in Hawaii were so loyal that they did not have to face such indignities and humiliation, a ten-year-old asked us recently while we were viewing pictures of the American-style concentration camps to which we had been sent after our forced eviction and exclusion from our West Coast homes and associations? What could we say in our own defense? How do you answer such an innocent question from one who never learned the unspoken reasons?

For years we have pondered how we could help assure that no other individual or group of Americans would ever be so arbitrarily and capriciously demeaned and dishonored, wrongly treated and caused to suffer, as we of Japanese origin were in World War II.

We, at long last, have found an answer. To make the cost or price of such unconstitutional activities so expensive that the Executive, the Congress, and/or the Judiciary would at least pause and consider before taking such inappropriate and inexcusable action as would provoke such demands for substantial and significant redress payments.

Contrary to the fears of Congressman Lungren, we would welcome establishing a precedent which would force future governments to stop and seriously consider any questionable action or reaction that could result in such high cost that it would have to be decided that it would be more prudent to refrain from such unreasonable action, a protective preventive device if you will. In our case, a General proposed a racist offense in the guise of military necessity. Without any real investigation, the War Department and the Chief Executive approved. And Congress supported that request without any investigation whatsoever of the truth or accuracy of that wholesale violation of the constitutional rights of certain citizens. Even the courts accepted without checking the facts and the evidence that an aging racist in uniform alleged. How different the result and the consequences might have been if, at every stage of the decision-making process, the party of interest at that stage had had to determine or at least estimate the potential price and impact that in the end the taxpayers would ultimately have to pay in the way of compensation for their misdeed?

If the most effective deterrent to crime is the fine and/or imprisonment, or both, why shouldn't the same established punishment be utilized in case we are ruthlessly robbed of our basic rights and liberties? If we are seriously injured in an automobile accident caused by a reckless driver, why should we simply walk away and ignore what happened? Will that inattention and indifference to our own hurts help prevent other automotive accidents caused by other drunken or drugged drivers? Would simply sending the careless driver to attend classes in proper driving be sufficient to deter accidents caused by carelessness or thoughtless behavior?

Though we know from long experience that prejudice and racism can't be erased simply by the passage of antidefamation laws, we know that if the bigots and warmongers are aware that certain punishment in the way of significant money fines and/or jail sentences, or both, is to be their minimum penalty, they would be less prone to be as cruel and barbaric as they so often can be.

If such are the lessons we have learned from private, civilian intolerance, why should not comparable standards we have developed for the protection against social mischief be adopted to protect our individual rights from wrongdoing by our public service, including members of the legislative, executive, and judicial branches, as well as the military, civil service, and so-called security and intelligence agencies and personnel?

Mr. Chairman, we respectfully suggest that this matter of setting a precedent for the future actions of government and especially of the lawmaking branch is of prime importance in seeking enactment of S. 1009. If money talks, as so many believe, let us make racism, bigotry, prejudice, discrimination, and warmongering so expensive that we can never again take a chance in officially practicing such inhuman, unsocial, and savage activities. Let us use this monetary payment standard as an effective, potent, and efficient disciplinary mechanism against ruthless and rampant un-Americanism and unconstitutionalism.

We know that there are those who will ridicule this solution as too idealistic, too simplistic, and too difficult. Frankly, we don't have an unequivocal answer. But, nothing else so far that we have attempted has succeeded. So, let's give this concept of establishing the precedent that all unconstitutional and illegal wrongs must be redressed a chance to prove itself in actual operation. Why not? We have much to gain and little to lose if we take the opportunity to put into practice our preachments and witness whether we can live up to our principles and practices or not.

In U.S. News and world Report for June 15, 1978, Nobel peace laureate Eli Weisel, testifying at the war-crimes trial of Klaus Barbie in France for participating in Hitler's annihilation of Europe's Jews in World War II, asked the question we of Japanese ancestry have asked many times as it relates to our wartime ill treatment, "Graduates of great universities, musicians and painters, lawyers and philosophers participated in the 'final solution' and were accomplices in death. How was this possible?"

Maybe we need to set some precedents out of that experience and ours to assure that never again will man's inhumanity to man be repeated without those who would perpetrate such crimes knowing in advance and on notice that they will have to suffer through redress to their victims for their heinous activities?

19. **Why Is Redress So Urgently Needed Now?**

Summary: While we understand and appreciate the fiscal and budgetary problems, among many others, that continue to challenge this Congress, in this Bicentennial of the Constitution and Bill of Rights we cannot believe that this historic Legislature can ignore to redress the legitimate 45-year-old grievances of those of Japanese ancestry as the Constitution and its Bill of Rights provide, for in doing so it might well revitalize the faith, vision, courage, and statesmanship of the Founding Fathers to resolve in their own indomitable spirit of "Go For Broke" the difficult issues of this new era in a manner to reflect deserved glory and credit not only to them today but also to those who wrote and adopted the immortal documents that made and kept us the greatest nation on earth and man's last best hope.

No one is more aware and appreciative than we of the many difficult fiscal and budgetary problems, along with many other equally contentious matters as trade, tax, defense, foreign relations, etc., which are challenging the Nation, and especially the Congress which is primarily responsible for determining the priorities in the national interest.

With due respect, we expect that this 100th Congress in the bicentennial commemorative year of the Constitution and the Bill of Rights will enact S. 1009 in spite of all the demands for appropriations because the basic principle of redressing wrongs committed in violation of constitutional safeguards is at stake. The monetary solatium authorized by the legislation is relatively token gesture, we understand, but its meaning is significant and substantial, not just to us of Japanese origin but to all Americans and to peoples throughout the world who look to the United States for continued leadership in the rule of law and sovereignty of the people. For how can we ask others to abide by human rights and liberties when we ourselves continue to fail to redress those who suffered most recently as a racial minority for the gross violation of these same rights and liberties we expect other governments to provide their own nationals and nationalities?

Under existing statutes relating to World War II imprisonment, had we Americans of Japanese ancestry been captured and interned by either or both the German, Italian, and/or Japanese enemies, we would have been entitled and probably paid by the United States Government 39 or 40 years ago. But, because we were forcibly detained by our own Government, and not by a foreign power, we have not yet been compensated even on a token basis for our years of enforced exile from our legal and actual homes in our own land; factually, we have not yet been even promised any compensation at all.

Indeed, we were not even entitled to the protections of the Geneva Convention which set international standards and conditions for captured prisoners of war. We weren't prisoners of war in the technical or legal sense, but in truth we were prisoners of a war in which our own Government not only denied us our constitutional rights but jailed us simply because of an accident of birth under terms less favorable and livable than those granted to German, Italian, and Japanese soldiers who were captured by American troops.

Isn't this a sad commentary, a tragic anomaly, and a travesty on our vaunted American sense of fair play, justice, and propriety? And what more appropriate opportunity than this, the Bicentennial of the Constitution and Bill of Rights, for the 100th Congress which will be celebrating its own bicentennial as a bicameral legislature within the next two years to reaffirm its faith in the Constitution and approve S. 1009.

We have been asked, and rightly so, why in this period of huge deficits and difficult budget restrictions, we insist upon monetary payments, both individual and collective? The answer is clear and plain, for as patriotic Americans who believe in the Constitution we cannot waive now what our Federal Charter grants us as our due, a redress of our grievances of World War II. If we surrender our constitutional rights under the pressures of fiscal and budgetary constraints, we in a sense are inviting the gun envisioned by Justice Jackson in the Korematsu case to be used against us to again violate our constitutional guarantees and deprive us of our just rights for the exigencies of the moment, in this instance financial rather than military necessity. We cannot afford to twice be the innocent victims of a constitutional crisis and twice be deprived of our Bill of Rights, this time being held to answer for the crime of an accident of birth, as we were subject to this same offense once before, and to continue to be deprived in a sense of life, liberty, and property, without due process of law, and to have our private property taken without just compensation.

We are confident that the Congress in its wisdom, given the will to do so, can find a legitimate and satisfactory solution to this money problem. As a matter of fact, the legislation itself provides a possible and viable answer. Under Section 204(b), appropriations to the Civil Liberties Public Education Fund of $1,300,000,000 is authorized. Then, under Section 205(b), "The Attorney General shall endeavor to make payment to eligible individuals who are living in the order of date of birth (with the oldest receiving full payment first), until all eligible individuals who are living have received payment in full."

Reading the authorization proviso with the schedule of payments, it would appear that the drafters of S. 1009 anticipated the possibility of scheduling payments on the basis of fiscal year appropriations. In other words, as I read the language of the bill, restitution could be paid on a staged scheduled scale which would depend on the appropriations authorized each fiscal year by the Congress, such as--for example--all those 70 years of age and over would be paid the first year, all those 60 years of age and over the second year, etc., until all the eligible individuals are compensated and the Civil Liberties Public Education Fund exhausted by the use of all authorized expenditures.

Of course, if the entire $1,300,000,000 could be appropriated at one time, it would be most welcome. But, in order that none can use the excuse of the lack of available funds, the sponsors of this measure have wisely provided at least one formula that seems to us reasonable, responsible, and feasible. It may well be that in its wisdom this Subcommittee or the full Government Affairs Committee, or even on the floor or in conference, a more expedient mechanism can be worked out for the enactment of S. 1009 with its provisions for individuals and collective amounts for the more general fund.

For legislators troubled with many difficult and troublesome legislative dilemmas as they are today, there could be some therapeutic value in considering such basic legislation as S. 1009 which deals with age-old issues which have confronted this Republic since its inception. Though I am certainly not a doctor or medical expert of any kind, it seems to me that debating the merits of this corrective and remedial bill could reactivate renewed interest in how the Founding Fathers struggled and resolved their difficult and troublesome issues not only of their times but also of drafting an instrument of government that even 200 years later remains a model for other governments, with provisions for adding amendments which allows it to be as modern and as effective and efficient as the people desire. S. 1009 is a simple bill that attempts to correct what misguided individuals wrecked upon one of the newer and smaller racial minorities in this country, whose ancestral nation is now America's closest ally and international partner, though only half a century ago it was our most implacable foe.

Concluding Comments

As we near the conclusion of our lengthy and detailed statement, it is our hope as Go For Broke Nisei Veterans of World War II that our prepared submission will be helpful and useful in persuading not only members of the Senate but also of the House to approve S. 1009 as long-deserved redress for our incredible experiences as evacuees and as volunteers who fought, as Commander-In-Chief President Truman declared on a hot summer day 41 years ago, as he pinned on the battle streamer of the 442nd Regimental Combat Team our seventh Presidential Distinguished Unit Ribbon, the organizational equivalent of the individual of the Congressional Medal of Honor, "...not only the enemy, but prejudice--and you won!"

But the cruel and accurate fact remains that, while we earned recognition and honors on all the battlefields of World War II, in both the European and Pacific Theaters, we have not truly won our war with prejudice here at home, President Truman notwithstanding. An Air Corps Captain by the name of Ronald Reagan joined General "Vinegar" Joe Stilwell in presenting the Distinguished Service Cross posthumously to One-Man-Army Staff Sergeant Kazuo Masuda, saying that the blood on the sands of the beaches ran as red for those of Japanese ancestry as they did for all other Americans.

The presumption of disloyalty which generations of West Coast bigots and warmongers and General DeWitt damned us with early in 1942 continues to haunt and stigmatize us as individuals and as minority Americans. We have gained a status and opportunities denied us prior to our military service in wartime, but we are still forced to wear the humiliating badge of suspect citizens.

Though we know from bitter experience that we can never expect every person to acknowledge our loyalty and allegiance to our country, enactment of S. 1009 into law will go far to eliminate the deep hurt and the sensitivity of that condemnatory presumption officially and with most of our fellow Americans. It may speed our complete acceptance socially, politically, and economically, though we must concede that we are far better off than we ever thought possible prior to World War II and our military service.

As most Members are aware, "Go For Broke", an informal gambling phrase meaning "to shoot the works", "to stake all on one chance", and comparable sentiments, is now a part of the lexicon of America. It began as the slogan or motto of the 442nd Regimental Combat Team, but its spirit also motivated all of those of Japanese ancestry who served in the United States Armed Forces in World War II. More, it is the summation of that indefinable spirit that has motivated and inspired those of Japanese ancestry ever since they first emigrated to these United States beginning about a hundred years ago or born here and is the heartfelt drive of those alien Japanese and their citizen children in World War II to demonstrate their loyalty and allegiance to the United States of America, becoming themselves "Better Americans In A Greater America" in the process.

In any event, just as we Japanese American World War II veterans, as well as all others of Japanese ancestry in the United states, did "Go For Broke" to prove our loyalty and devotion to our country and our Constitution, we call on Congress, as the representative of all the people, to "Go For Broke" and enact S. 1009 to vindicate our faith and belief in the American way as quickly as possible. The stigma of disloyalty which our Government cast upon us as a mark of shame because of our affinity with then enemy Japan cannot be cleared and corrected until this redress legislation is approved by the Congress and signed by the President, and the Supreme Court has reversed its decisions as to the constitutionality of the wholesale eviction and exclusion.

What this historic legislation means to us of Japanese origin is, of course, vitally important. But even more crucial is what it means to every American, without regard to race, nationality, color, creed, or circumstance, and to the Constitution and Bill of Rights of this, our native land.

This is the year, and this is the Congress which will determine once again whether the Constitution, the Bill of Rights and the several other Amendments apply to us, the "WE", of all of the people all of the time under all circumstances and conditions, or some of the people some of the time.

"We, the people of the United States" of this generation, including those of us who are of Japanese ethnicity, have reaffirmed our acceptance of this Constitution "in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and to secure the blessing of liberty to ourselves and our posterity".

But, as to the objectives, do all of these, or only some, apply equally to us of Japanese ancestry? And what about the Bbill of Rights and the XIII, XIV, XV, XIX, XXIV, and XXVI Amendments?

Are we all, or just those whose forbears came over in the Mayflower, entitled to the freedoms of religious belief and practices, of speech, of the press, of peaceable assembly, and/or of petitioning the Government for the redress of grievances?

Are all of us, or some of those whose ancestors fought in the Revolutionary War and the Civil War, secure in their persons, houses, papers, and effects, against unreasonable search and seizures, with no warrants to issue except on probable cause properly supported?

May a soldier be quartered in any house without the consent of an owner who is White Anglo Saxon Protestant, a Catholic, a Jew, or a Gentile? Who is a Buddhist, a Moslem, a Hindu? Or an atheist or agnostic?

Is it possible for a person, on account of his race, be held to answer for a capital or otherwise infamous crime without a presentment or indictment, or compelled to testify against himself, or be deprived or life, liberty, or property, without due process of law, or have his private property taken for public use without just compensation?

Are all of us, but not Asians, Africans, Latin Americans, or native Indians and Eskimos, entitled to a speedy and public trial, with a jury of our peers if so wished, to be confronted by the witnesses against us, to enjoy compulsory process for obtaining favorable witnesses, and to have the assistance of competent counsel?

Aren't we all protected from excessive bail or cruel and unusual punishment regardless of racial origins?

Can certain enumerated rights be denied any of us due to the coloration of our skin, hair, eyes, etc.?

Could any State make or enforce any law which abridges our rights, privileges, and immunities as citizens of the United States and of the State in which we may reside, or deprive any of us of life, liberty, or property without due process of law, or be denied the equal protection of the laws simply because of our presumed affinity with any country or region?

Is it legal to deny the right to vote because of race, religion, color, or previous condition of servitude, or on account of age or sex?

These may appear to be highly improbable and hypothetical questions, but our own experiences before, during, and after World War II warn us of these unhappy facts of life for some of us who do not share the mentality, appearance, and/or the objectives of others who comprise what is described as the majority population. The honest and unequivocal answers to these constitutional questions will help us comprehend whether we are considered an integral and essential part of We, all of the people, or whether We remain only a tolerated segment of the population.

We respectfully request the Congress to answer these questions in the affirmative by enacting S. 1009 overwhelmingly to demonstrate to all the people of the United States, including ourselves, and of the world, that we of Japanese ancestry are an important and respected minority which enjoys all of the duties, responsibilities, opportunities, privileges, and immunities of our citizenship of all of the people all of the time, in all places, and under all circumstances. We want to become what we believe we have earned--at home and on the battlefield--the right to be considered part and parcel of what remains as "man's last hope".

May I end our statement with the Japanese American Hymn, which was written by Marion Tajiri who had a brother with us in the 442nd Regimental Combat Team, as I recall, with music by Marcel Tyrel. This hymn reflects the spirit of "Go For Broke" and of those who fought in World War II, in the Pacific and Europe.

> There was a dream my father dreamed for me
> A land in which all men are free--
> Then the desert camp with watch towers high
> Where life stood still, 'mid sand and brooding sky.
> Out of the war in which my brothers died,
> Their muted voices with mine cried--
> This is our dream, that all men shall be free!
> This is our creed: we'll live in loyalty.
> God help us rid the land of bigotry--
> That we may walk in peace and dignity.

Mr. Chairman, may I personally express the appreciation of the Go For Broke Nisei Veterans for your continuing cooperation in maintaining the memorial to the Nisei Soldier dead who volunteered for military duty from what used to be the WRA camp at Rowher, Arkansas, which you helped dedicate some 15 years ago when you were a Congressman. May I add a final plea that you expedite as much as humanly possible this humane and long overdue legislation to redress Americans of Japanese ancestry for their travails of World War II so that our Constitution on this bicentennial will be better prepared to serve our Nation and the world in the next century and the centuries that follow.

Thank you for the opportunity to testify before your Subcommittee this afternoon.

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TESTIMONY OF WILLIAM HOHRI

June 17, 1987

Mr. Chairman and members of the subcommittee, thank you. I appreciate your invitation to me to speak on behalf of the National Council for Japanese American Redress and as the lead named-plaintiff in the court case of Hohri, et al. v. the United States. I have read S.1009. I am pleased to recommend its enactment. Even though our organization's focus is on the courts, I believe I speak for most of our supporters in urging Congress to redress the grievances of the victims of our wartime program of mass exclusion and detention. The responsibility for this grave injustice rests with all three branches of government.

Despite the separation of powers, we have seen the Congress and the courts interact on the issue of Japanese-American redress. After almost two years of preparation, we filed our lawsuit in March 1983 in the U.S. District Court for the District of Columbia. Our arguments relied on the findings of the Commission on Wartime Relocation & Internment of Civilians, as well as on our own legal and historical research. In May 1984, while we prevailed on several issues, our case was dismissed due to the statute of limitations. We, of course, appealed. In January 1986, the U.S. Court of Appeals for the District of Columbia Circuit tolled the statute of limitations to July 31, 1980, the date of the establishment of the same Commission. Our case was remanded to trial.

Both sides appealed to the Supreme Court. The government's appeal was accepted while ours was left pending. On the first day of this month, the Supreme Court vacated the Appeals Court decision and remanded the case with instructions to transfer our appeal to the U.S. Court of Appeals for the Federal Circuit. In 1982, while we were preparing our court complaint, Congress enacted the Federal Courts Improvement Act and created this new forum for certain appeals. Our case is now back to square two, the first level of appeal. Though the Court's decision is

(continued)

a disappointment, we will continue to seek a judicial resolution of the legal and constitutional issues created by our wartime exclusion and detention. As an aside, I hope that Congress will clarify the ambiguities of that portion of the 1982 Federal Courts Improvement Act that caused this unfortunate delay.

Clearly, then, the separate powers, while not intervening, do interact. And while our focus is on the courts, I do have comments on two parts of S.1009.

I strongly support the apology. It complements our request for a declaration from the courts that mass exclusion and detention were illegal and unconstitutional. I would like respectfully to request one alteration. On line 7 of page 6 of the bill, please consider substituting the word "exclusion" for "relocation." Since "evacuation" is used, "relocation" seems redundant. Moreover, around 5,000 persons were excluded from their homes and communities in the coastal region and forced to move inland, even though they were never interned. Also, exclusion orders were issued for each campsite to provide a legal basis for confinement within each camp's perimeter. If any inmate crossed the perimeter, he or she would trespass into an exclusion zone and be subject to arrest. By the government's own admission, military necessity did not apply. Perhaps the meanest use of the exclusion occurred in May 1942 when General DeWitt initiated an order that Japanese-American soldiers on furlough be excluded from the Western states. Fortunately, this insult lasted only eleven months rather than three years. Surely, such excesses require an apology.

I would like to have clarified a potentially ambiguous phrase on page 10, line 20. I respectfully suggest that "*against the United States*" be replaced with "*for payments under this Act.*" Thus, the statement would read: "*The claims of an eligible individual for payments under this Act shall be extinguished—....*" My concern here is that the present wording may lead to some confusion in our Court action. I am sure there is no intent in this phrase to cross the barrier of the separation of powers. This suggested change would remove such unintended interpretation.

Also, I strongly support the widest distribution of the hearings and findings of the Commission. I would respectfully suggest that you consider modifying paragraph (3) of page 11 of the bill to read:

> *To have published the hearings and findings of the Commission and to promote their distribution to schools, booksellers and libraries.*

The transcripts of the Commission's hearings were never published. The Commission's staff, plus some dedicated volunteers, did manage to edit their entire several thousand pages. These pages were waiting to be printed at the U.S. Government Printing Office when the Commission's term expired. Throughout its 1981 hearings, the Commission repeatedly promised the witnesses who appeared that their testimonies would go into the record. This published record has yet to materialize. I think we should make certain it does through this bill.

I conclude by noting that we have read press clippings on our Supreme Court case. They reflect a widespread and growing public interest and, I believe, support for Japanese-American redress. We even made the pages of The Daily Mining Gazette of Houghton, Michigan. Perhaps the most unintentionally humorous and telling comment I heard was on a San Antonio, Texas, radio call-in show from a rather hostile, elderly man who explained, "You Japanese have changed since World War II." Well, I don't think I've suffered any noticeable genetic changes in my life, but I think we as a nation have grown up.

# # #

Statement of John C. Kirtland, Esq.
Before the Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510
June 17, 1987

Statement in Support of S. 1009

Mr. Chairman, Members of the Subcommittee, my name is John C. Kirtland. I practice law in Washington, D.C. and have represented the Aleut people of Alaska for nine and one-half years in their efforts to obtain redress for the injustices they suffered at the hands of the United States government in World War II.

The bill before you, S. 1009, accepts the findings and implements the recommendations of the Commission on Wartime Relocation and Internment of Civilians. That Commission, after extensive hearings on the Aleut issues in Anchorage, Unalaska, and St. Paul, concluded on the evidence that the Aleut people had suffered losses that are compensable under American Constitutional standards and the principles of equity that govern our land. For the Aleut people, the Commission recommended five forms of restitution, each related to specific losses sustained but not heretofore redressed by our government. Our panel will address each of these recommendations for compensation.

Mr. Chairman, before presenting our arguments for official recognition and compensation of the injustices suffered by the Aleut people, we wish to take this opportunity to thank Senators Matsunaga, Stevens, Inouye and Murkowski for their leadership on this legislation. We understand that nearly three-quarters of the members of the United States Senate have cosponsored S. 1009.

The issues here are neither partisan nor parochial. The questions presented address the most fundamental choices of government in dealing with the lives and property of citizens who are defenseless and vulnerable to exploitation. In cosponsoring S. 1009, Senators have made the statement that in America the victims of official wrongdoing may petition for redress, and receive a fair settlement of the matter. Today's hearing, therefore, is more than the presentation of testimony on a bill: it is a celebration, really, of our Constitutional process in the Bicentennial Year of the Constitutional Convention. We are very pleased to be here.

The Aleut Experience In World War II

Mr. Chairman, thanks to the personal leadership of Senator Ted Stevens, the mandate of the Commission, established by Congress in 1980, was expanded to include an investigation into the Aleuts' treatment by their government in World War II. The Commission reported to Congress in January and June of 1983. As those reports make plain, the facts and circumstances of the Aleuts' experience are well documented and not in dispute. The record of the injustices suffered by the Aleuts is based almost entirely upon contemporary U.S. government correspondence, memoranda and other official documents.

Mr. Chairman, the Aleut villages of St. Paul and St. George in the Pribilofs, and the Aleut villages of the Aleutian Island Chain west of Unimak Island were evacuated within sixty days of the fall of Attu and Kiska to Japanese forces in June of 1942. The Commission concluded that the evacuation of some 881 Aleuts from these villages was a rational wartime measure designed to protect civilians in an active theater of war -- and we do not challenge that finding.

The Aleuts' case for compensation derives not from the relocation orders by military commanders on the scene, but rather from the treatment suffered at the hands of the government following evacuation. The Aleuts were transported to temporary camps in Southeastern Alaska, established by the Department of the Interior in abandoned fish canneries, an abandoned gold mine, and an abandoned CCC camp. The conditions were deplorable.

Mr. Chairman, the people in these camps suffered from inadequate medical care, from inadequate shelter, from inadequate sanitation facilities and other life-threatening conditions. For the most part the camps were isolated: Transportation in and out was controlled by government supervisors. The people were impoverished. The press and correspondence from Alaska to the lower-48, and press reports within the territory, were subject to military censorship. So the concern and outrage felt by witnesses, such as the territory's attorney general and the officials of the Public Health Service, was never communicated to the outside world.

Food was adequate to sustain life. But the complete breakdown of other services resulted in epidemics of disease that ravaged the camps. The very old, and the very young, in particular, could not survive. More than ten percent of all the people died while in these camps that were established for their "care."

While the Aleuts were in the camps, their homes and community buildings back in the villages were occupied by military forces under the Alaska Defense Command. In these remote outposts, the local commanders lost all control of the troops. U.S. Military Boards of Inquiry have determined that the Aleuts' homes and personal property, left behind out of necessity, were ransacked and looted by U.S. military personnel. Their churches were desecrated, and religious icons of immense cultural value were taken as souvenirs. Incredibly, the situation in all the villages was the same. There was not a single village where the local commanders were able to protect the Aleuts' property, as it was their duty to do.

Mr. Chairman, the Commission has correctly concluded that no effective system of records exists by which to estimate exactly the Aleuts' uncompensated losses. And no dollar value can be placed on the suffering and death. Therefore, traditional claims procedures have been rejected in favor of direct Congressional redress for the grossly negligent treatment suffered by the Aleuts while under the dominion and control of government officials in that difficult period.

The Subcommittee's Anchorage Field Hearing

Under Senator Ted Stevens' Chairmanship during the 98th Congress, this subcommittee received the testimony of many survivors of the World War II camps in Southeastern Alaska. In Anchorage field hearings on August 29, 1984, the subcommittee heard from the late Phil Tutiakoff, a venerated and respected Aleut leader from Unalaska, who survived the Burnett Inlet camp experience as a young and handicapped child.

The subcommittee heard from Gregg Golodoff, removed from his home on Attu by Japanese Imperial Forces to prison camp on Hokkaido Island. When Mr. Golodoff returned to Alaska, his people were administratively relocated to Atka, and the historic Aleut village of Attu was lost forever by executive fiat.

In the Anchorage hearings, Senator Stevens sought the personal experiences of Dan Prokopief, Leo Savaroff, Perfinia Pletnikoff, George Dirks, Michael Lekanof, Anna Philemonof, Anatoly Lekanof, Jr., the Reverend Michael Lestenkof, Francis Emanoff, Mike Zacharof, Boris Merculief, Lilian Pelky, Faye Schlais, Zenia Borenin and many others. The compelling and very personal testimony of these witnesses has been published, and is available for the subcommittee's consideration of S. 1009 in this Congress. We commend the subcommittee to that record, as well as the one being made today by those of us who cannot really comprehend the extent of the suffering felt by the Aleuts in the camps.

The Restitution Recommended by the Commission

Mr. Chairman, the Commission, having compiled a comprehensive record of the Aleuts' uncompensated losses during World War II, recommended five specific remedies:

First, a trust fund should be established for the beneficial use of the Aleut people principally affected by the World War II experience, and their surviving village communities. Second, individual compensation should be provided to each surviving Aleut who was relocated to the temporary World War II facilities, or born while his or her natural mother was subject to relocation. Third, the Aleuts should be compensated for church property lost, damaged, or destroyed while U.S. servicemen were occupying their home villages. Fourth, the Aleut people should receive compensation for the elimination of Attu Village by executive fiat, which resulted, of course, in the loss of traditional Aleut lands on Attu Island. And Fifth, the Commission recommended that wartime debris on the inhabited portions of the Aleutians should be cleaned up.

Thanks, once again, to Senator Stevens' leadership, the hazardous wartime debris along the Aleutian Chain, at least in populated places, has been substantially removed since the Commission made its report. Using the Environmental Restoration

Defense Account, the U.S. Department of Defense through annual appropriations has made great progress in cleaning up live ammunition, unsafe structures, and other debris remaining from military installations long since abandoned. All of the people of the region are grateful to Senator Stevens and his Defense Appropriations Subcommittee colleagues for their initiative in this regard. Accordingly, the provisions of S. 1009 relating to cleanup of wartime debris can be deleted.

The other four Commission recommendations, of course, remain to be implemented. As Attachment A to my prepared statement, I have respectfully submitted draft legislative language to implement these four remaining measures of restitution for the Aleut people. This language, in the form of a draft bill, has been developed in consultation with the staff of the House Committee on the Judiciary in preparation for full committee markup. It is consistent with the principles contained in S. 1009, but at substantially reduced cost to the United States. It achieves the objectives of the Aleut people in seeking redress for the grievances suffered through official wrongdoing in World War II.

The Justice Department Objections

Mr. Chairman, the Assistant Attorney General, Mr. Willard, appearing before the House Subcommittee on April 29th, presented testimony on H.R. 1631, a bill whose language is identical to title III of S. 1009, as introduced. The Justice Department objected on two grounds: first, the bill as introduced may raise Establishment Clause questions, as regards the procedure used to compensate the Aleuts for lost, damaged or destroyed church property; and second, the bill as introduced may violate the Appointments Clause, Art. II, § 2, cl.2, by providing direct Congressional designation of an Administrator of Aleut restitution.

There is some merit to these objections. Accordingly, Attachment A, submitted with my statement, has been drafted to eliminate any possible Establishment Clause or Appointments Clause concerns in respect of the compensation program for the Aleut people. After all these years, the Aleut people cannot risk constitutional infirmity in the process for payment of compensation that the Constitution so clearly compels.

Conclusion

Mr. Chairman, I request that a Memorandum, "The Relocation and Internment of the Aleut People During World War II: A Case in Law and Equity for Compensation," be included in the hearing record. This Memorandum, prepared by my office at the request of the Aleut organizations, provides the historical basis for direct Congressional consideration of the Aleut claims. It provides the specific bases in law and equity for compensation of the Aleuts' losses.

As our research makes plain, there is ample precedent for payment of the compensation provided in S. 1009 and companion bills. Indeed, the Congress would establish a precedent if it did not provide for restitution of the Aleuts' losses in World War II. Virtually every other group who suffered comparable losses has been compensated long ago. The American civilian losses in the Philippines have been paid; the claims of religious organizations, civilians detained by the enemy, employees of contractors abroad, and many others have been adjudicated under special procedures established after World War II. The residents of Guam have been made whole. The Micronesian Claims Act of 1971 established a fund to provide compensation for wartime losses sustained in raging battle. And there are many more.

The Aleuts, almost alone among Americans who suffered war-related civilian losses, have yet to be provided with restitution for such claims. This subcommittee now has the opportunity to complete the task that Congress undertook, beginning in 1946, to alleviate the burdens of those American civilians caught up in the destruction of the Second World War. The Aleuts' case, of course, is more compelling than most, because of the documented injustices they sustained at the hands of officials of the United States government.

We urge the subcommittee to consider carefully the language contained in Attachment A, as discussed above. This language follows the scheme of restitution provided in title III of S. 1009, without the potential problems on Constitutional grounds raised by the Department of Justice in earlier hearings.

Thank you, Mr. Chairman.

Attachment A

Statement of John C. Kirtland
June 17, 1987

A BILL

To accept the findings and implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians with respect to the Aleut people.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Aleutian and Pribilof Islands Restitution Act".

DECLARATION OF POLICY

SEC. 2. (a) **FINDINGS.**-- The Congress finds and declares that --

(1) In 1980 the Commission on Wartime Relocation and Internment of Civilians was established by Act of Congress and was directed to review, among other things, certain United States military directives requiring the relocation and, in some cases, the detention in temporary camps of Aleut civilian residents of the Aleutian and Pribilof Islands during World War II.

(2) The Commission submitted detailed reports to Congress in February and June 1983, containing findings of fact and recommendations for compensation of Aleuts for certain wartime losses.

(3) As documented in the Commission's reports, the Aleut civilian residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island were relocated during World War II to temporary camps in isolated regions of southeastern Alaska where they remained, under United States control and in the care of the United States, until long after any potential danger to their home villages had passed.

(4) The United States failed to provide reasonable care for the Aleuts, and this resulted in widespread illness, disease, and death among the residents of the camps; and the United States further failed to protect Aleut personal and community property while such property was in its possession and under its control.

(5) The United States has not compensated the Aleuts adequately for the conversion or destruction of personal property and the conversion or destruction of community property caused by the United States military occupation of Aleut villages during World War II.

(6) The United States has designated nearly all of Attu Island as a unit of National Wilderness Preservation System, thus precluding the return to ownership of Attu Island for the benefit of the Aleut people.

(7) There is no remedy for injustices suffered by the Aleuts during World War II except an Act of Congress providing appropriate compensation for those losses which are attributable to the conduct of the United States forces and other officials and employees of the United States.

(b) **PURPOSE.--** It is therefore declared to be the purpose of this Act, having considered the Commission's report and other factors, to make restitution to Aleut residents of the Pribilof Islands and Aleutian Islands west of Unimak Island, in settlement of the United States' obligations in equity and at law, for --

(1) injustices suffered and unreasonable hardships endured while under United States control during World War II;

(2) personal property taken or destroyed by United States forces during World War II;

(3) community property, including community church property, looted, vandalized, or destroyed by United States forces during World War II; and

(4) loss of ownership of Attu Island.

DEFINITIONS

SEC. 3. As used in this Act, the term --

(1) "Administrator" means the person designated by the Secretary to advise and inform the Secretary concerning expenditures from the Aleutian and Pribilof Islands Restitution Fund;

(2) "affected Aleut villages" means those Aleut villages in Alaska whose residents were evacuated by United States forces during World War II, including Akutan, Atka, Nikolski, Saint George, Saint Paul and Unalaska; and the Aleut village of Attu, Alaska, which was not rehabilitated by the United States for Aleut residence or other use after World War II.

(3) "Association" means the Aleutian/Pribilof Islands Association, Inc., a nonprofit regional corporation established for the benefit of the Aleut people and organized under the laws of the State of Alaska;

(4) "Corporation" means The Aleut Corporation, a for-profit regional corporation for the Aleut region organized under the laws of the State of Alaska and established pursuant to section 7 of the Alaska Native Claims Settlement Act (Public Law 92-203);

(5) "eligible Aleut" means any Aleut living on the date of enactment of this Act who, as a civilian, was relocated by the authority of the United States from his home village on the Pribilof Islands or the Aleutian Islands west of Unimak Island to an internment camp, or other temporary facility or location, during World War II; or any Aleut living on the date of enactment of this Act who was born while his or her natural mother was subject to such relocation during World War II; and

(6) "Secretary" means the Secretary of the Interior.

ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION FUND

SEC. 4. (a) **ESTABLISHMENT.**-- The Secretary is authorized and directed to establish as an account in the Treasury of the United States the Aleutian and Pribilof Islands Restitution Fund (hereinafter referred to as the "Fund"), to be administered by the Secretary. The Fund shall consist of amounts appropriated to it, as authorized by sections 6 and 7 of this Act.

(b) **REPORT.**-- It shall be the duty of the Secretary to hold the Fund, and to report to the Congress each year on the financial condition and the results of operations of such Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year.

(c) **INVESTMENT.**-- It shall be the duty of the Secretary to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired --

(1) on original issue at the issue price, or

(2) by purchase of outstanding obligations at the market price.

(d) **SALE OF OBLIGATIONS.**-- Any obligation acquired by the Fund may be sold by the Secretary at the market price.

(e) **CREDITS TO FUND.**-- The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(f) **TERMINATION.**-- The Secretary shall terminate the Fund three years after the date of enactment of this Act, or one year following disbursement of all payments from such Fund, as authorized by this Act, whichever occurs later. On the date the Fund is terminated, all investments shall be liquidated by the Secretary and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

DESIGNATION OF ADMINISTRATOR

SEC. 5. As soon as practicable after the date of enactment of this Act, the Secretary shall offer to undertake negotiations with the Association, leading to the execution of an agreement with the Association to serve as Administrator under the terms of this Act. The Secretary may appoint the Association as Administrator if such agreement is reached within 90 days after the date of enactment of this Act. If no agreement is reached within such period, the Secretary shall appoint another person as Administrator under this Act, after consultation with affected Aleut village leaders and the Corporation.

COMPENSATION FOR COMMUNITY LOSSES

SEC. 6. (a) **IN GENERAL.**-- Out of monies from the Fund, the Secretary shall make restitution, as provided by this section, for certain Aleut losses sustained in World War II.

(b) **TRUST ESTABLISHED.** --(1) The Secretary shall establish a trust of $5,000,000 for the benefit of affected Aleut communities, and for other purposes. Such trust shall be established pursuant to the laws of the State of Alaska, and shall be maintained and operated by not more than seven trustees, as designated by the Secretary. Each affected Aleut village may submit to the Administrator a list of three prospective trustees. The Secretary, after consultation with the Administrator, affected Aleut villages, and the Corporation, shall designate not more than seven trustees from such lists as submitted.

(2) The trustees shall maintain and operate the trust as eight independent and separate accounts, including --

(A) one account for the independent benefit of the wartime Aleut residents of Attu and their descendants;

(B) six accounts, each one of which shall be for the independent benefit of one of the six surviving affected Aleut villages of Atka, Akutan, Nikolski, Saint George, St. Paul, and Unalaska; and

(C) one account for the independent benefit of those Aleuts who, as determined by the Secretary, upon the advice of the trustees, are deserving but will not benefit directly from the accounts established pursuant to subparagraphs (A) and (B).

The trustees shall credit to the account described in subparagraph (C), an amount equal to 5 per centum of the principal amount credited by the Secretary to the trust. The remaining principal amount shall be divided among the accounts described in subparagraphs (A) and (B), in proportion to the June 1, 1942 Aleut civilian population of the village for which each such account is established, as compared to the total civilian Aleut population on such date of all affected Aleut villages.

(3) The trust established by this subsection shall be administered in a manner that is consistent with the laws of the State of Alaska, and as prescribed by the Secretary, after consultation with representative eligible Aleuts, the residents of affected Aleut villages, and the Administrator. The trustees may use the principal, accrued interest and other earnings of the trust for --

(A) the benefit of elderly, disabled, or seriously ill persons on the basis of special need;

(B) the benefit of students in need of scholarship assistance;

(C) the preservation of Aleut cultural heritage and historical records;

(D) the improvement of community centers in affected Aleut villages; and

(E) other purposes to improve the condition of Aleut life, as determined by the trustees.

(4) There is authorized to be appropriated $5,000,000 to the Fund to carry out the purposes of this subsection.

(c) **COMPENSATION FOR DAMAGED OR DESTROYED CHURCH PROPERTY.--** (1) The Administrator shall make an inventory and assessment of church property damaged or destroyed in affected Aleut villages during World War II. In making such inventory and assessment, the Administrator shall consult with the trustees of the trust established by subsection (b), elders of affected villages, congregation leaders, and the clergy. Within one year after the date of enactment of this Act, the Administrator shall submit such inventory and assessment, together with an estimate of the present replacement value of lost or destroyed furnishings and artifacts, to the Secretary.

(2) The Secretary shall review the inventory and assessment provided pursuant to paragraph (1), and shall make payment to the trust established pursuant to subsection (b) in an amount reasonably calculated by the Secretary to compensate affected Aleut villages for church property lost, damaged or destroyed during World War II.

(3) The trustees shall make distribution of the compensation provided pursuant to this subsection in a manner consistent with the purposes of this Act.

(4) There is authorized to be appropriated to the Fund $1,400,000 to carry out the purposes of this subsection.

(d) **ADMINISTRATIVE AND LEGAL EXPENSES.--** (1) The Secretary shall reimburse the Administrator, not less often than annually, for reasonable and necessary administrative and legal expenses in carrying out its responsibilities under this Act.

(2) There is authorized to be appropriated to the Fund such sums as are necessary to carry out the purposes of this subsection.

INDIVIDUAL COMPENSATION OF ELIGIBLE ALEUTS

SEC. 7. (a) **PAYMENTS TO ELIGIBLE ALEUTS.**--(1) In accordance with the provisions of this section, the Secretary shall make per capita payments out of the Fund to eligible Aleuts for uncompensated personal property losses, and for other purposes. The Secretary shall pay to each eligible Aleut the sum of $12,000. All payments to eligible Aleuts shall be made within one year after the date of enactment of this Act.

(2) The Secretary may request, and upon such request, the Attorney General shall provide, reasonable assistance in locating eligible Aleuts residing outside the affected Aleut villages. In providing such assistance, the Attorney General may use available facilities and resources of the International Committee of the Red Cross and other organizations.

(3) The Secretary may request the assistance of the Administrator in identifying and locating eligible Aleuts pursuant to this section.

(4) Any payment made under this subsection shall not be considered income or receipts for purposes of any Federal taxes or for purposes of determining the eligibility for or the amount of any benefits or assistance provided under any Federal program or

under any State or local program financed in whole or part with Federal funds.

(b) **AUTHORIZATION.**-- There is authorized to be appropriated to the Fund such sums as are necessary to carry out the purposes of this section.

ATTU ISLAND RESTITUTION PROGRAM

SEC. 8. (a) **WILDERNESS DESIGNATION.**-- In accordance with subsection (3)(c) of the Wilderness Act (78 Stat. 892), the public lands on Attu Island, Alaska within the National Wildlife Refuge System are designated as wilderness by section 702(1) of the Alaska National Interest Lands Conservation Act (94 Stat. 2417). In order to make restitution for the loss of traditional Aleut lands and village properties on Attu Island lands, while preserving the present designation of Attu Island lands as part of the National Wilderness Preservation System, compensation to the Aleut people in lieu of Attu Island conveyance shall be provided in accordance with this section.

(b) **ACREAGE DETERMINATION.**-- Within 90 days after the date of enactment of this Act, the Secretary shall determine the total acreage of land on Attu Island, Alaska, that was subject to traditional use by the Aleut villagers of that island for subsistence and other purposes. In making such acreage determination, the Secretary shall establish a base acreage of not less than 35,000 acres within that part of eastern Attu Island traditionally used by the Aleut people, and shall further, from the best available information, including information that may be submitted by representatives of the Aleut people, identify any such additional acreage on Attu Island that was subject to such use. The combination of base acreage and such additional acreage shall constitute the aggregate acreage determination, and shall be the basis for compensation to the Corporation pursuant to this section. The Secretary shall promptly notify the Corporation of the results of the aggregate acreage determination made pursuant to this subsection.

(c) **VALUATION.**-- Within 120 days after the date of enactment of this Act, the Secretary shall determine the value of the aggregate Attu Island acreage determination, made pursuant to subsection (b): Provided, That no tract of acreage within such determination shall be valued at less than $350 per acre nor more than $500 per acre: Provided further, That the total valuation of all acreage within such determination shall not exceed $15,000,000. In making such valuation, the Secretary shall take into consideration such factors as he considers appropriate, including --

(1) fair market value;

(2) environmental and public interest value; and

(3) established precedents for valuation of comparable wilderness lands in the State of Alaska.

The Secretary shall promptly notify the Corporation of the valuation made pursuant to this subsection, and such valuation shall constitute a final determination of compensation unless appealed within 30 days by the Corporation. If such appeal is made, the Secretary shall within 30 days review the valuation in light of the appeal, and issue immediately thereafter a final determination of the total value of that acreage determined to be subject to traditional use pursuant to subsection (b). Such final determination shall constitute the amount payable as compensation to the Corporation for the Aleuts' loss of ownership of Attu Island.

(d) **IN LIEU COMPENSATION PAYMENT.**-- The Secretary is authorized and directed to pay the full amount of compensation, as determined pursuant to subsection (c), to the Corporation in lieu of any conveyance of Attu Island as recommended by the Commission on Wartime Relocation and Internment of Civilians.

(e) **VILLAGE SITE CONVEYANCE.**-- The Secretary of the Interior may convey to the Corporation the traditional Aleut village site on Attu Island, Alaska pursuant to the authority contained in section 1613(h)(1) of title 43 of the United States Code: Provided, That following the date of enactment of this section, no site on Attu Island, Alaska other than such traditional Aleut village site, shall be conveyed to the Corporation pursuant to such section 1613(h)(1) of title 43 of the United States Code.

(f) **AUTHORIZATION.**-- There is authorized to be appropriated $15,000,000 to the Secretary for purposes of carrying out the provisions of this section.

COMPLIANCE WITH BUDGET ACT

SEC. 9. No authority under this Act to enter into contracts or to make payments shall be effective except to the extent or in such amounts as are provided in advance in appropriations Acts. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only after September 30, 1988.

SEPARABILITY OF PROVISIONS

SEC. 10. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Statement of Agafon Krukoff, Jr.
President
The Aleut Corporation
Before the Subcommittee on Federal Services,
  Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510
June 17, 1987

Statement in Support of S. 1009

Mr. Chairman, Members of the Subcommittee, my name is Agafon Krukoff. I am President and Chief Executive Officer of The Aleut Corporation, the Aleut regional business corporation established under the terms of the Alaska Native Claims Settlement Act of 1971.

One of my responsibilities is the management of lands conveyed to the corporation by that landmark legislation. Another is to make investments and secure earnings for the Aleut shareholders of our corporation. The success of our enterprise will mean greater economic security for the Aleut people.

I am here, Mr. Chairman, to discuss one specific recommendation of the Commission. That recommendation is for Congress to declare Attu Island to be Native land and to direct that the island be conveyed to the Aleut people through The Aleut Corporation.

The basis of this recommendation may be stated in simple terms: traditionally, Attu has been Aleut land, and were it not for the improper conduct by Interior Department officials immediately after the war, Attu Island would be Aleut land today. The circumstances which kept Attu Island in the public domain are both profoundly tragic and little-known to the general public. I will summarize those circumstances.

On June 8, 1942, units of the Imperial Japanese Army made an unopposed landing at Holtz Bay on Attu Island. The main force attacked the undefended Aleut village at 7:30 a.m. Forty-two Aleut citizens of the United States and two Alaska Indian Service employees were taken prisoner. One of the Aleut elders died in July and was buried on Attu. The remaining Aleuts were taken from Attu in September and transported to Hokkaido Island in Japan, there to remain prisoners of war until they were discovered by American occupation forces in 1945.

When the Attuan people were repatriated from detention in Japan, they were not rehabilitated to their home island. Instead, for the convenience of the Interior Department, they were involuntarily merged into the Village of Atka. This failure resulted in their loss-of-right when land selections were made following enactment of the Native Claims Settlement Act.

The effect of this loss-of-right was that at least 69,120 acres of land selections -- land selections that otherwise would have been routine -- could not be made by the Village of Attu for the benefit of shareholders of the Village and Regional Corporations. The Interior Department's post-war administrative convenience, in other words, was accomplished at the cost of losing 69,120 acres of land and a traditional village that had existed on Attu Island for thousands of years. In recognizing that the Interior Department's conduct deprived the Aleut people of valuable landholdings, the Commission properly recommended compensation.

Mr. Chairman, the events of recent years have made the return of Attu Island impractical, if not impossible, from a legislative perspective. This is because Attu Island's public lands within the National Wildlife Refuge System have been designated as wilderness, to become part of the National Wilderness Preservation System. This designation was made by section 702 of the Alaska National Interest Lands Conservation Act, in accordance with section 3(c) of the Wilderness Act.

Mr. Chairman, when testimony was taken in the 98th Congress on the Commission's implementing legislation, it became apparent that major environmental organizations would strongly oppose any return of Attu Island to Native control and ownership. The rightful development of Attu Island properties, in other words, would jeopardize environmental values recognized and protected by Congress when ANILCA was enacted.

As an alternative, the Alaska Congressional delegation, with the support of environmental groups and others, has recommended that The Aleut Corporation be extended compensation in lieu of the Attu conveyance as proposed by the Commission. One such form of compensation is contained in S. 1009, as introduced and referred to your subcommittee. That compensation would be established as a property account, which would be available to

The Aleut Corporation for the purpose of bidding on surplus federal property made available by GSA procedures. Under the terms of S. 1009, The Aleut Corporation's account would consist of $500 in bidding rights for each of the 35,737 acres determined to have been traditionally used by the Aleut people on Attu Island. The initial balance of the property account, in other words, would be $17,868,500 in bidding rights for surplus federal properties.

Another approach is reflected in Attachment A to our counsel's statement -- the legislative language prepared for consideration by the House Committee on the Judiciary. That draft provides for a process of identification, by the Secretary of the Interior, of those lands traditionally used by the Aleut people on Attu Island, followed by a valuation process using the Department's current procedures for the valuation of comparable wilderness lands in Alaska. Once the valuation process is complete, the Secretary of the Interior would certify the amount to be paid as compensation to the Aleut people for the loss of traditional Aleut lands on Attu Island.

Under the terms of this approach, the compensation for the loss of Attu Island lands would be not less than $12,250,000 and not more than $15,000,000. There would be an authorization for appropriations to make this payment, in lieu of the acquisition of Attu Island by the Aleut interests.

Mr. Chairman, on a personal note, I am from St. Paul Island in the Pribilofs, and my parents were at Funter Bay's abandoned fish cannery camp, on Admiralty Island, during World War II. I was born shortly after their return to St. Paul. I urge that the full measure of relief recommended by the Commission be granted, principally for the benefit of the villages themselves, and for the benefit of those few survivors of the World War II experience that are alive today. I urge that S. 1009 be approved for the benefit of those who maintain the Aleut culture and traditions -- the elders and those who follow in their ways.

After Mr. Philemonof's statement, I will be pleased to answer any questions the committee may have.

Thank you, Mr. Chairman.

Statement of Dimitri Philemonof
Executive Director
Aleutian/Pribilof Islands Association
Before the Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510
June 17, 1987

Statement in Support of S. 1009

Mr. Chairman, Members of the Subcommittee, my name is Dimitri Philemonof, Executive Director of the Aleutian/Pribilof Islands Association, Inc., the non-profit corporation established to promote the welfare of the Aleut region's Native peoples. Our Association administers a number of programs under contract with the State of Alaska and federal agencies of the United States.

The draft legislative language submitted by our counsel, John Kirtland, would eliminate the Constitutional concerns raised by the Assistant Attorney General of the United States in hearings before the House Judiciary Committee. Those concerns were, as stated earlier, that the Government, under the terms of S. 1009 and companion bills, had too great a role in the rehabilitation of church properties lost, damaged, or destroyed by American servicemen in World War II. Also, under the terms of S. 1009 and companion bills, the process for Congressional designation of an Administrator for Aleut reparations violates the Constitutional requirement that such officers be appointed by the President or heads of departments.

Mr. Chairman, the language we submit for your consideration today eliminates these concerns by providing direct monetary compensation for church property losses determined to be caused by American servicemen in the Aleutian region in World War II. The language also provides for appointment of the administrators of Aleut restitution by the Secretary of the Interior, after consultation with appropriate regional entities. These modifications of the bill can be accomplished without damaging the basic scheme for reparations outlined in S. 1009.

The six Aleut villages and the 881 village residents affected by the relocation during World War II suffered severely, and have never fully recovered from the experience. The Commission's recommended compensation will assist in the rebuilding process. I will address three of the five remedies provided by the Commission.

The Trust for Affected Aleut Communities

Mr. Chairman, the Commission recommended establishment of a trust for the benefit of the affected Aleut communities and for the survivors of the relocation remaining in their home villages. The principal and earnings of the $5,000,000 trust account would be administered by trustees for the benefit of elderly, disabled, or seriously ill persons on the basis of special need, the benefit of students in need of scholarship assistance, the preservation of Aleut cultural heritage and historical records, the improvement of community centers, and for other purposes.

These villages were deprived of their elders, in many cases, through death and the ravages of disease in the camps. The people returned after the war to find their village community centers looted and destroyed, their communal property taken or vandalized. This trust would help restore some of the lost community property, and remind all Aleuts, young and old, of the suffering of the generations that found themselves caught up in the severe dislocation of the war years. Its earnings could be used to train new leaders, to carry on the traditions of the Aleut culture that were tested so severely by the relocation experience.

Compensation for Church Properties

Mr. Chairman, today it seems hard to believe that the churches of the Aleut region were systematically looted by American servicemen in the Aleutian theater during World War II. The losses of icons and church utensils were extensive, and reasonably documented at the time. In some cases, the surviving elders can identify with precision those properties that were lost, damaged, or destroyed in their sacred houses of worship.

The Commission has properly recommended that the Aleut congregations be compensated for the losses that they sustained, to the extent possible at this late date. Under the revised legislative language we have submitted today, the trustees appointed by the Secretary of the Interior would receive the compensation paid for lost, damaged or destroyed church properties. They, in turn, would work with the affected congregations to ensure that substantial restitution is made, consistent with the intent of the Commission and the Congress. The identification of such lost, damaged, or destroyed church properties, and its valuation, would be the job of the Administrator -- we trust that the Secretary of the Interior would appoint the Association as Administrator, as the terms of S. 1009 make clear should be done.

Individual Compensation of Aleuts

Mr. Chairman, the Commission recommended that $5,000 per capita should be paid to each surviving Aleut who was relocated to the camps during the war. All of the Congressional bills introduced since the Commission made its report have recommended a per capita payment of $12,000 for each eligible Aleut.

There are several reasons for this increase. First, the sponsors of the bill have recognized the extreme hardships suffered by the Aleuts in the camps during the relocation process. Conditions were so harsh that more than 10 per cent of all the Aleuts died while they were there. There was no medical care in most camps, and virtually all Aleuts suffered epidemics of disease.

There is probably no survivor who did not lose a family member in the World War II camps; there is probably no survivor who did not suffer from serious disease caused by inadequate sanitation facilities, inadequate clean water, inadequate shelter, and other failures of administration.

Moreover, there is virtually no Aleut survivor today who did not lose most of his personal property while away in the camps of Southeastern Alaska. This property, as the Commission has documented in its report, was never paid for.

For all of these reasons, the sponsors of S. 1009 and companion bills have recommended $12,000 as a payment to each surviving Aleut -- and we support the bills in this regard.

Conclusion

Mr. Chairman, I am here today to represent the people of the Aleutian and Pribilof region who suffered the relocation process during World War II. These people at the time did not question the military decision to relocate them. It was a rational war measure, and our people were fully cooperative with the military authorities who came, on less than 48-hours notice, and asked them to move with no more than one suitcase of personal belongings.

The tragedy, of course, was that the government failed in its duty of care to those Aleuts in its charge. They were neglected, they became ill, and extraordinary numbers of them died. The survivors returned to find their property and their churches ransacked, looted and burned. There was no military necessity for this, as the Commission concluded.

As a matter of equity and fair treatment, we ask that Congress promptly enact the remedies recommended by the Commission on Wartime Relocation and Internment of Civilians.

Thank you, Mr. Chairman. Our panel will be pleased to answer any questions you may have.

STATEMENT OF SENATOR BILL BRADLEY
INTERNMENT OF JAPANESE-AMERICANS
JUNE 17, 1987

In 1987, we celebrate the 200th birthday of the United States Constitution. This is a time for us to examine, reaffirm, and cherish the freedoms and responsibilities provided by our Constitution and the Bill of Rights.

But as we look at the history of our Constitution and our Nation, the period of Japanese-American internment, during the years 1942-1945, represents a period of U.S. history of which we cannot be proud. It is fitting that in 1987 the U.S. government make amends for having violated the Constitutional rights of Japanese-Americans. This legislation puts Congress and the American people on record in support of enforcing the Constitutional rights of all Americans.

A study conducted by the Commission on Wartime Relocation and Internment of Civilians concluded that the removal and detention of 120,000 Japanese-Americans in 1942 was not justified by military necessity. The Commission found that the internment order was the result of racial prejudice and war hysteria. Americans and resident aliens were systematically denied the due process to which they were entitled under our Constitution. Certainly, at a minimum, an apology is in order.

To redress this injustice, the legislation provides a small monetary compensation to each survivor of the U.S. internment camps. While history cannot be undone, there are ways to make amends for past wrongs. S. 1009 is the first time the U.S. government has officially acknowledged the injustices done to Japanese-Americans.

In addition, the legislation establishes a fund to educate the public about this period of our history and the abuses of civil rights that occurred. This is important. As Nobel Peace Laureate Elie Wiesel, a survivor of the Auschwitz concentration camp, once said, "Memory is our shield, our only shield, to protect mankind against a repetition of the slaughter." Only an informed, caring, and vigilant public can prevent similar abridgements of civil rights from recurring.

I am proud to join 75 of my Senate colleagues in cosponsoring S. 1009.

Senator Daniel J. Evans
Testimony before the Governmental Affairs Subcommittee on Civil Service, Postal Service and Federal Services on S. 1009

Mr. Chairman, I thank you for this opportunity to speak before the Subcommittee on S. 1009. I am encouraged that you are taking up this important issue; one that would address our tragic mistakes of the past. In discussing Japanese Relocation efforts during WWII, not only must we acknowledge the gross aberration of Japanese Americans' civil rights, but we must offer them redress.

As a Senator from the State of Washington, I have a special interest in this legislation. The first group of Japanese citizens to be removed from their homes under President Roosevelt's Executive Order were from Bainbridge Island, Washington. They were the first of nearly thirteen thousand Japanese Americans to be funneled into assembly centers and eventually into relocation facilities.

The story of Theresa Takayoshi and her family highlights the material losses and the emotional strife caused by the wartime hysteria. Theresa's father was Japanese and her mother Irish. They lived in Seattle and ran a neighborhood store until they were forced to abandon their home. Regulations which governed evacuation stated that any person with at least one-sixteenth of Japanese blood was subject to relocation. So as her mother was spared, Theresa, her father and her own children had one day to sell their store and car before an abrupt move to the Puyallup assembly center. They had to sell their store for $1,000--just the contents of which were worth $10,000--and their car was sold for a mere $25.

As they entered the assembly center, the men were instructed to go out back and fill large bags with straw--it was to be for their beds. This story paints only a small part of a grim picture. The quality of life in these centers was atrocious. They were overcrowded and families suffered from an acute lack of privacy with no borders or walls to separate them from others.

In one instance, Theresa's own 6 year old son became ill with food poisoning and had to be rushed to the hospital. Yet she was not allowed to be with her son. A frightened boy later told his mother that the nurse had said "Let him die, don't even go near him." Fortunately he survived.

Yet, there are opponents of this legislation who wish to ignore raw, racial prejudice woven in what was supposed to be legitimate national security justification for internment.

I know that Theresa Takayoshi and her young family survived the internment. Yet, I know this not because she is one of my constituents. She never moved back to Seattle, but settled in New York. In fact, a significant portion of Japanese Americans chose not to return to their homes on the West Coast where they would would have been met with bigoted resentment.

What is perhaps most alarming about this story is that it took place in the United States of America. This is the same country that has ~~premised~~ prided itself on freedom, justice and, the preservation and protection of individual rights.

The victims of Executive Order 9066 were guilty of no crime other than the apparent crime of being of Japanese ancestry. Japanese Americans left their homes in an atmosphere of racial prejudice and returned to the same.

Thirty-four years after the last citizens were released from captivity, Congress established the Commission on the Wartime Relocation and Internment of Japanese American Citizens to assess the decision to intern and relocate Japanese Americans. Two years after its inception, the Commission issued certain factual findings and subsequent recommendations. I have cosponsored legislation to implement these recommendations throughout my tenure in the U. S. Senate. Although legislation in 98th and 99th Congress never was granted a complete hearing, Congress must no longer delay consideration of this issue.

The $20,000 compensation that would be allotted to each victim, and the educational fund established by this legislation are a modest and symbolic attempt to redress wrongs against loyal Americans. Although we cannot restore completely what already has been lost, the legislation would serve as a symbol to all that the U. S. can come to terms with its own tragic mistake.

Our legal tradition provides us with a system of damage compensation to promote accountability in government's actions. For example, false imprisonments from the May Day Demonstrations in 1972 resulted in a Federal Court decision to award money damages to the demonstrators for the hours they spent in detention. Additionally, special compensation was rightfuly granted to the 52 Iran hostages under the Hostage Relief Act and Anti-Terrorism Act. These examples offer precedential evidence that victims justifiably have received individual compensation for a loss of bodily freedom. Furthermore, federal law affords both equitable relief and money damages under section 1983, against any state or feddal official who violates a person's consititutional rights.

We have the opportunity to use our hindsight. And with the 20/20 vision it provides, we not only can recognize this flagrant injustice from history, but we can learn from it. By offering redress to the Japanese Americans we will invest in a deterrent from future atrocities.

Mr. President, I commend the Subcommittee for its willingness to take up this important legislation. I would urge the Committee to report this proposal to the full Senate with a favorable recommendation.

STATEMENT

OF

RICHARD K. WILLARD

ASSISTANT ATTORNEY GENERAL

CIVIL DIVISION

UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

FOR THE RECORD OF THE

JUNE 17, 1987

HEARING

ON

S. 1009

A BILL TO ACCEPT THE FINDINGS AND IMPLEMENT THE RECOMMENDATIONS

OF THE

COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

I appreciate this opportunity to present the views of the Department of Justice on S. 1009, a bill "[T]o implement the recommendations of the Commission on the Wartime Relocation and Internment of Civilians." For the reasons set out below, the Administration recommends against enactment of this legislation.

Background

The wartime relocation and internment of Japanese-Americans were undertaken pursuant to decisions made at the highest level of our government during World War II as part of our nation's defense effort. These decisions were made at a time when the very survival of the Republic was threatened. With the passage of time, these decisions have been examined and questioned. In our view, the Commission's extensive effort to study the wartime relocation and internment program, despite its apparent thoroughness, proves the futility of endeavoring accurately and completely to comprehend the perception of our national leaders under the extreme wartime conditions of the period. These issues will continue to be a matter of historical and scholarly debate.

The United States government has officially recognized that much unjustified personal hardship came about as a result of the internment program. The internees were among the millions of innocent victims of World War II, confined in the wake of the unprovoked attack on Pearl Harbor and very real fear of a Japanese invasion of the West Coast. Regardless of one's opinion as to the bona fides of the government officials who approved and implemented the relocation and internment program, we all can agree that Japanese-Americans suffered much deprivation and hardship. They were expected to make personal, professional, and social sacrifices of a nature not expected of other United States citizens. As it is impossible to bring back to life the many Americans who died in the American war effort, including those heroic Americans of Japanese descent who fought in the U.S. Armed Forces, so it is impossible to restore to all those Americans the freedom that was taken as a result of war. However, previous Congresses, Presidents and the Attorney General have taken steps to acknowledge and compensate for the injuries suffered by Japanese-Americans during this period.

After the conclusion of World War II, Congress acted to authorize a program of compensation for the financial losses entailed by evacuations from the West Coast. The American-Japanese Claims Act, enacted in 1948, authorized compensation for "any claim" for damages to or loss of real or personal property as "a reasonable natural consequence of the evacuation or exclusion of" persons of Japanese ancestry as a result of governmental action during World War II. 50 U.S.C. App. §1981-1987. This Act was amended by subsequent Congresses to liberalize its provisions for compensation. Under the Act as amended, the Justice Department received claims seeking approximately $147 million. Ultimately, 26,568 settlements were achieved, many of which settled claims presented by family groups rather than individual claimants. Thus, it is safe to conclude that of the 120,000 evacuees, most submitted claims under the

American-Japanese Claims Act and received compensation. A total of over $37 million was paid in compensation pursuant to this Act.

In early 1976, President Ford formally revoked Executive Order 9066, issued by President Roosevelt in 1942 to permit exclusions from the West Coast. Also in 1976, Congress repealed Public Law 77-503, which was enacted in 1942 to ratify Executive Order 9066. In repealing the Executive Order, President Ford stated that with the benefit of what we know now, the wartime exclusions were a mistake. Most Japanese-Americans demonstrated exceptional fidelity to our nation's ideals and loyalty to the United States despite the hardships visited upon them. There can be no doubt that Executive Order 9066 visited injustice upon loyal Americans of Japanese ancestry.

Recent Litigation

This issue has been the subject of extensive litigation in recent years. In 1983, three separate coram nobis petitions were filed seeking to have wartime misdemeanor convictions set aside on the ground that the government knowingly suppressed evidence and misrepresented facts in submissions to the Supreme Court during the 1940's. In response to one of these coram nobis petitions filed by Fred Korematsu in the United States District Court for the Norther District of California, Attorney General Smith determined that "it is time to put behind us this controversy. . . and instead reaffirm the inherent right of each person to be treated as an individual." Accordingly, the Attorney General decided that "it is singularly appropriate to vacate [Korematsu's] conviction for nonviolent civil disobedience," as well as to do the same for other similarly situated individuals who request it. Thus, in each of these cases, the United States, while disputing petitioner's allegations, moved to vacate the conviction and dismiss the underlying indictment or information, thus moving effectively to afford petitioners the very relief they sought.

In Yasui v. United States, (D. Ore., Jan. 26, 1984), the court granted the government's motion, vacated the conviction and dismissed the petition as moot. Petitioner nonetheless appealed to the Ninth Circuit. Because of Mr. Yasui's recent death, however, the Ninth Circuit, on March 23, 1987, dismissed the appeal as moot, and the district court's decision vacating petitioner's conviction stands.

In Korematsu v. United States (N.D. Cal., April 19, 1984) the court denied the government's motion, granted the coram nobis petition, but made no findings of fact. Consequently, the United States chose not to appeal.

Finally, in Hirabayashi v. United States, (W.D. Wash., Feb. 10, 1986), the court granted the petition to set aside the conviction for failure to report for internment, but refused to set aside the conviction for violating a curfew order. Petitioner appealed from this denial of his coram nobis petition as to his curfew violation conviction and the government cross-appealed from the grant of coram nobis as to the evacuation conviction. The appeals were argued on March 2, 1987 and are under submission before the Ninth Circuit.

Hohri v. United States, No. 84-5460, (D.C. Cir., Jan. 21, 1986), is a suit filed on behalf of 120,000 persons of Japanese ancestry and their heirs seeking personal injury and property loss damages claimed to arise out of the evacuation and internment program. The government had prevailed in the district court on limitations and other jurisdictional grounds. In a 2-1 decision, the court of appeals reversed and remanded for trial a portion of plaintiffs' claims.

The court of appeals affirmed dismissal of all personal injury claims and the contract and breach of fiduciary duty claims alleged in the complaint on jurisdictional grounds, but decided that plaintiffs' property damage claims under the Fifth Amendment Takings Clause could not be resolved on preliminary jurisdictional grounds and therefore reached the limitations issue. The majority opinion held that because the Supreme Court had established a presumption in favor of deferring to the military judgment on the necessity for the evacuation program, limitations did not commence to run until Congress created the Commission on Wartime Relocation and Internment of Civilians in 1980. According to the court, the statute creating the Commission thereby "finally removed the presumption of deference to the judgment of the political branches." The court also concluded that the American-Japanese Claims Act did not provide an exclusive remedy because the Act did not provide relief that encompassed all damages required to make whole persons who suffered a "taking."

Chief Judge Markey of the Federal Circuit, sitting by designation, dissented. In his view, the appeal should have been transferred to the Federal Circuit for disposition and, in any event, the statute of limitations barred this suit.

The United States filed a petition for rehearing and suggestion for rehearing *en banc*; the suggestion was denied by a split *en banc* court (6-5). Thereafter, both plaintiffs and the United States filed petition for writs of certiorari with the Supreme Court.

After granting our petition and hearing oral argument, the Supreme Court, on June 1, 1987, decided, in accordance with the position we urged before the Supreme Court, that plaintiffs should have taken their appeal to the Federal Circuit rather than the D.C. Circuit. Thus, the District Court's judgment dismissing the action stands subject to plaintiffs' right to seek reversal of the judgment after their appeal is transferred to the Federal Circuit pursuant to the Supreme Court's recent decision.

S. 1009

I would like to now address some of the Department's concerns with the specific provisions of S. 1009.

Findings

Section 1(a) provides congressional findings: (1) that the findings of the Commission on Wartime Relocation and Internment of Civilians accurately and completely describe the circumstances of the exclusion, relocation and internment of citizens and aliens of Japanese and Aleut ancestry; (2) that the internment of those persons of Japanese ancestry on the West Coast "was carried out without any documented acts of espionage or sabotage, or other acts of disloyalty" by them; (3 and 4) that there was no adequate military or security reason for the internment and that it was caused instead, by racial prejudice, war hysteria, and a failure of political leadership; (5) that the excluded persons of Japanese ancestry suffered enormous material, intangible, educational and job training losses; and (6) that the "basic civil liberties and constitutional rights" of those persons of Japanese ancestry were fundamentally violated by that evacuation and internment. Section 1(b) similarly states the purposes of the legislation. Section 101 apologizes on behalf of the nation for the wartime relocation and internment program.

We have reviewed the Commission's report. It does call attention to the hardships suffered by Americans of Japanese ancestry. However, it must be recognized that conclusions and subjective determinations which necessarily are an integral part of the report are subject to debate. Indeed, in June 1983, the Commission released an addendum to its report discussing a multivolume Department of Defense publication entitled "The 'magic' Background of Pearl Harbor" because it had not discussed this important source of wartime intelligence in its report.

We question the wisdom and, indeed, the propriety, of accusing leaders of the United States government during World War II, both civilian and military, of dishonorable behavior. The wartime decisions which form the predicate for this legislation were taken against a backdrop of fears for the survival of our nation; we recently had been attacked by a totalitarian regime which had enjoyed a virtually unbroken string of military successes, both before and immediately after it commenced war upon us. The decision made by our wartime leaders should be considered in that context.

It may be that the Commission is correct in concluding that the assumptions on which the exclusion and evacuation and detention programs were based were erroneous. It is a long unsubstantiated further step, however, to brand those actions as a product of "racial prejudice, or war hysteria, and a failure of political leadership." In most instances, the persons so accused are not alive to defend themselves today. Moreover, some of the Commission's conclusions and its selection of evidence marshaled in support of its conclusions are suspect. These matters are best left to historical and scholarly analysis rather than debated by Congress.

We do not believe that this bill should be the vehicle for promulgation of an "official" version of these historical events. The Department opposes enactment of the findings in section 1.

Pardon Recommendations

The Department opposes sections 202(a) and 202(b), which request the Attorney General to review certain criminal convictions with a view toward pardon and to submit pardon recommendations to the President in certain cases.

The pardon provision of the bill is completely unnecessary. As noted above, the government has offered to vacate the conviction of all Japanese-Americans who were convicted of violating wartime restrictions imposed by Executive Order 9066 and has done so in the three coram nobis proceedings filed to date. It appears that only about 39 Japanese Americans were convicted of misdemeanor violations of Executive Order 9066, many of whom may no longer be living. Vacating the convictions and dismissing the underlying indictments or informations of Japanese-Americans affords these individuals the full and meaningful relief to which a pardon would entitle them, and completely obviates the pardon review process provided in § 202.

Moreover, while we note that section 202(b) of this bill attempts to correct the constitutional flaws presented by the pardon provision of this legislation in the 99th Congress, we remain dubious of the constitutional validity of this provision when Article II, Section 2, Clause 1 of the Constitution grants virtually absolute pardon authority in the President. As we noted in our bill report on the 99th Congress, the granting of a pardon is an act of grace by the President, and the Constitution does not invest the legislature with any authority in the pardon process. The Supreme Court has confirmed that the President's authority to grant pardons may not be limited by legislative restriction. Schick v. Reed, 419 U.S. 256 (1974).

The Attorney General's advisory function (now the Associate Attorney General by assignment, 28 CFR 0.36,) in connection with the consideration of all forms of Executive clemency, including pardon, commutation (reduction) of sentence, remission of fine and reprieve, and the President's ultimate decision to grant or deny Executive clemency, is wholly discretionary. Department of Justice officials involved in discharging this function act solely as confidential advisors to the President in the exercise of the pardon power, and not in fulfillment of any statutory mandate to conduct the kind of proceedings contemplated in Section 202.

Additionally, the language of § 202 is ambiguous in at least two respects. Section 202(a) directs the review of "all cases in which United States citizens and permanent resident aliens of Japanese ancestry were convicted of violations of laws of the United States," including convictions for violations of military directives respecting the exclusion, relocation or detention of individuals solely on the basis of Japanese ancestry. First, the class of individuals whose cases are to be reviewed is vaguely defined. The present wording of Section 202(a) could be interpreted to request the review of not only the cases of those living but also the cases of those who are deceased. It has been a long established practice not to grant posthumous pardons. The legal basis of the practice is in large part the concept that a pardon, like a deed, must be accepted by the person to whom it is directed. Acceptance, of course, is impossible when the recipient is deceased. See, United States v. Wilson, 7 Pet. 160 (1833); Burdick v. United States, 236 U.S. 79 (1915); Meldrim v. United States, 7 Ct. Cl. 595 (1871); Sierra v. United States, 9 Ct. Cl. 224 (1873); 11 Op. A.G. 35 (1864).

Second, provision for the review of "all cases" involving violations of "any laws of the United States, including convictions for violations of military orders," is too broad. This language may be interpreted to require the review of both felony and misdemeanor offenses, as well as require the review of any crime committed during the evacuation, relocation and internment period, such as murder, extortion, kidnapping, theft, counterfeiting and other offenses which may have been committed on a government reservation by members of the class.

Agency Review of Applications

Section 203 would require agencies to review with liberality applications for restitution of positions, status or entitlements, giving full consideration "to the historical findings" of the Commission and the findings in the Act. We see no need for this provision, are uncertain as to how it could fairly be applied in practice at this late date, and suggest that it could lead to extreme difficulties in administration with resultant litigation.

The Restitution Fund

Section 204 would establish a Civil Liberties Public Education Fund in the amount of $1.3 billion to be available for disbursement pursuant to sections 205 and 206.

Section 205 provides for the tax free award of $20,000 to every living person of Japanese ancestry who was deprived of liberty or property as the result of the wartime programs. Nonresidents apparently would be entitled to the benefits of this section. Since, according to the recommendations of the Commission, approximately 60,000 persons would benefit from those awards, about $1.2 billion would be expended on this program.

Section 206 would establish a Board of Directors of the fund provided for in section 205. The board would disburse the remaining $100 million or more of the Fund for the purposes enumerated in subsection (b) of section 206, including projects "for the general welfare of the ethnic Japanese community in the United States."

The Department opposes these provisions for paying additional reparations to individuals where Congress has already enacted a comprehensive statutory scheme which provided a reasonable and balanced contemporaneous remedy to affected individuals. By enacting the 1948 American-Japanese Claims Act, Congress recognized long ago that many loyal Americans of

Japanese descent were injured by the wartime relocation and internment program. Although the Commission's report challenges the amount of compensation chosen by Congress as inadequate, Congress has spoken after considerable debate, and there is no good reason to question that settlement now three-and-one-half decades later.

The American-Japanese Claims Act did not include every item of damages that was or could have been suggested. It did, however, address the hardships visited upon persons of Japanese ancestry in a comprehensive, considered manner, taking into account individual needs and losses. This effort to correct injustice to individuals was in keeping with our nation's best tradition of individual rather than collective response and was more contemporaneous with the injuries to the claimants than would be any payments at this late date.

Moreover, in 1956, Congress considered legislation that directly called into question the adequacy of the claims settlements provided in the 1948 Act. The bill as introduced would have liberalized the relief provisions of the Act by granting expanded compensation for certain losses. Congress rejected this proposal because it "would substantially reopen the entire project." H.R. Rep. 1809, 84th Cong., 2d Sess., 9 (1956). Thus, with the hardships and deprivations of the internees still relatively contemporaneous, a later Congress adjudged the American-Japanese Claims Act to be fundamentally sound. Nothing has occurred since Congress last considered the matter to warrant a supplemental payment to internees. The results of the settlement process under the Act, long since completed, deserve to be accepted as a fair resolution of the claims involved.

The bill's restitution provisions would also impose heavy administrative burdens on the Attorney General. The bill would confer on the Attorney General responsibility for investigating, finding and paying eligible recipients under severe time constraints. The Attorney General is specifically prohibited even from requiring eligible persons to make application for these payments. This duty could require the Department to commit a considerable amount of manpower and resources to the search for eligible recipients. Yet, the bill would provide no funding for the location or identification of eligible recipients and would expressly prohibit the Attorney General from recovering expenses incurred in carrying out this responsibility from the Trust Fund set up to pay eligible recipients.

We also oppose the concept of a special fund incorporated in section 206. As noted earlier, we do not believe it is the proper function of our government to adopt an "official" version of these historical events. Similarly, we oppose spending one hundred million dollars to "educate" the American people to accept this official interpretation of our history.

Definition of Eligible Individuals

We also oppose the breadth of the definitions of eligible individuals set forth at section 201 of the bill.

First, the term "living" is imprecise. It is unclear whether the term is intended to refer to the time of the enactment of the legislation, the time when application for the benefit is made, or to the time when payment of a benefit is made.

Second, the definition would cover "any living individual" who had been subject to the exclusion, relocation, or detention, without any express exclusion of persons residing outside the United States. *See*, § 201(1). The all inclusiveness of the term "eligible individual" overlooks the important factor that at least several hundred of the detainees were fanatical pro-Japanese, had terrorized their fellow detainees loyal to the United States, and voluntarily sought repatriation to Japan after the end of the war. *See*, *Acheson* v. *Murakami*, 176 F. 2d 953, 958 (9th Cir. 1949); *McGrath* v. *Abo*, 186 F. 2d 766, 771-72 (9th Cir.), *cert*. *denied*, 342 U.S. 832 (1951); and in particular Findings of the Fact 18, 20, 22, 25, 27, 29, 35, 39, 40, 45, 46 of the United States District Court for the Southern District of California in *Murakami* v. *Acheson*, attached to and made part of the court of appeals' decision in that case. It would be unfair to the United States and to the loyal persons of Japanese descent if the benefits of this legislation were made available to persons who were disloyal to the United States.

Title III of S. 1009.

The Department is also opposed to Title III of S. 1009, entitled "Aleutian and Pribilof Islands Restitution." In this connection the Commission observed that "[t]he Aleut evacuation and the removal of persons of Japanese ancestry from the West Coast during the same period were separate events -- neither caused nor influenced the other . . . The evacuation of the Aleuts was a reasonable precaution taken to ensure their safety." Personal Justice Denied, at 318. The focus of the Commission's report was upon its conclusion that "the evacuation of the Aleuts was not planned in a timely or thoughntful manner," loading to hardships upon the persons exposed to the conditions flowing from their evacuation from the war zone.

We analyze below the specific provisions which S. 1009 would enact to benefit Aleuts. Fundamentally, however, we do not believe that wartime hardships of persons properly removed from a war zone provide any factual predicate for consideration of especial, favorable treatment for this group as opposed to other individuals whose lives were disrupted and who suffered hardship or death during World War II. Many activities undertaken by our government during World War II could be criticized, with hindsight, as untimely or poorly planned. We do not believe that such criticism can appropriately form the basis for special compensation.

Turning to the specific provisions of Title III of the bill, we have these comments.

The Administrator as an Officer of the United States

Section 305 would provide for an "Administrator" (defined in section 302(1)) who would administer certain expenditures made by the Secretary of the Treasury from the Aleutian and Pribilof Islands Restitution Fund established by section 303. Section 305(a) would designate as "Administrator" the "Association," defined in section 302(4) as "the Aleutian/Pribilof Islands Association, a non-profit regional corporation established for the benefit of the Aleut people and organized under the laws of the State of Alaska." (We do not know whether the Aleutian/Pribilof Islands Association would have to be incorporated, or whether it is already in existence; we are likewise not informed whether it is or would be a not-for-profit regional organization under the laws of Alaska Native Claims Settlement Act of 1971, 85 Stat. 691, as amended, 43 U.S.C. § 1606(d).)

The designation in a statute of a person or corporation to perform statutory functions necessarily raises the question whether the designee is charged with functions which may be performed only by an officer of the United States. If that is the case, the person or the governing body of the corporation must be appointed in the manner provided for in the Appointments Clause of the Constitution, i.e., by the President by and with the advice and consent of the Senate, or, where authorized, by heads of departments. Art. II, § 2, cl. 2. Congress cannot appoint officers of the United States.

Whether a person is an officer of the United States in a constitutional sense depends upon his statutory duties. A person who performs merely advisory functions, and who possesses no enforcement authority or power to bind the government, is generally not considered to be an officer within the meaning of the constitutional provisions cited above. 24 Op. A.G. 12 (1902); 26 Op. A.G. 247 (1907); H.R. Rep. No. 2205, 55th Cong. 3d Sess. 48-54 (1899). However, a person who performs significant governmental duties pursuant to the laws of the United States is an officer in the constitutional sense, and therefore must be appointed pursuant to Article II, § 2, cl. 2 of the Constitution. Buckley v. Valeo, 424 U.S. 1, 126, 141 (1976).

We have examined the statutory duties of the Administrator under section 306 of the bill in order to determine whether his functions will be merely advisory or whether the Administrator will be involved in the actual administration of the Act. According to § 306(a), the Administrator would make restitution as provided in that section for certain Aleutian losses sustained in World War II, and take such other action as required by Title III of the bill. These duties would benefit the establishment of a trust of $5 million for the benefit of the affected Aleutian communities and the appointment of not more than seven trustees to maintain and operate that trust (§ 306(b)(1)); the regulation of the manner in which the trust to be administered (§ 306(b)(3)); the rebuilding, restoration, or replacement of damaged or destroyed churches and church property (§ 306(c)); and assistance to the Secretary of the Treasury in identifying and locating Aleuts entitled to receive payments under § 307 (§ 307(a)(3)). The Administrator, thus, would not be a mere conduit of funds but would be charged with the performance of a significant amount of administrative responsibilities under a federal statute. The Constitution therefore requires either that the Administrator be appointed in accordance with Article II, § 2, cl. 2, or that the bill be amended so as to relieve the position of any duties directly imposed upon by a federal statute.

Restoration of Church Property

Section 306(c), dealing with the restoration of church property, also raises some constitutional concern. This subsection would authorize the Administrator "to rebuild, restore or replace churches and church property damaged or destroyed in affected Aleut villages during World War II." The Administrator would receive $100,000 from the Secretary of the Treasury to make an inventory and assessment of all churches and church property damaged or destroyed in the affected Aleut villages during World War II. Within one year after the enactment of this legislation the Administrator would be required to submit the inventory and assessment "together with specific recommendations and detailed plans for reconstruction, restoration and replacement work to be performed" to a review panel comprised of the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, and the Administrator of GSA. If the Administrator's plans and recommendations are not disapproved by the review panel within sixty days, the Administrator would implement them as soon as possible. If the differences between the Administrator and the review panel should be irreconcilable, the Secretary of the Treasury would submit the matter to Congress for approval or disapproval by joint resolution. Section 306(c)(4) would authorize the appropriation of $1,399,000 to carry out the purposes of the church restoration program.

Under this approach, the compensation for the destroyed or damaged churches would not be turned over directly to the affected Aleut villages, but to the Administrator. The Administrator would be charged with the statutory duties of making an inventory and assessment "together with specific recommendations and detailed plans for reconstruction, restoration and replacement work to be performed"; of submitting the inventory, assessment, and recommendation to a review panel consisting of three federal officers; and of trying to reconcile any differences between himself and the review panel, irreconcilable differences between the Administrator and the review panel to be resolved by Congress. The effect of this procedure would be that the details of restoring or rebuilding the churches would be determined by the Administrator (who, as the result of his statutory functions would have to be an officer of the United States), and reviewed by the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, the Administrator of GSA, and possibly Congress. This government involvement in the manner in which the funds allocated for church repair or reconstruction are to be spent would raise First Amendment concerns. Meek v. Pittenger, 421 U.S. 349, 370 (1975); Committee for Public Education v. Regan, 444 U.S. 646, 659-60 (1980).

I understand the Department of the Interior has additional concerns regarding Title III.

For all the foregoing reasons, the Department of Justice would recommend that the President veto S. 1009.

AMERICAN BAR ASSOCIATION
GOVERNMENTAL AFFAIRS OFFICE • 1800 M STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 331-2200

STATEMENT

OF

WILLIAM L. ROBINSON

on behalf of the

AMERICAN BAR ASSOCIATION

before the

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE
AND CIVIL SERVICE

of the

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

on

THE WARTIME INTERNMENT OF CIVILIANS

June 17, 1987

Mr. Chairman and Members of the Committee:

The American Bar Association is pleased at the opportunity to express our views on the wartime internment of civilians. My name is William L. Robinson. As an officer of the ABA Section of Individual Rights and Responsibilities, I have been designated by ABA President Eugene C. Thomas to represent the more than 320,000 members of the Association.

Mr. Chairman, the ABA supports legislation before you which would provide appropriate redress, including appropriate monetary compensation, to Americans of Japanese Ancestry who, during World War II, lost their freedom and their property simply and only because of their racial background. In 1984, the House of Delegates of the American Bar Association passed the following resolution:

> BE IT RESOLVED, that the American Bar Association hereby urges the Congress of the United States to provide appropriate legislative recognition to those denied equal justice under law pursuant to Executive Order 9066 and subsequent laws subjecting Japanese Americans to detention during World War II.

As you know, on the basis of an alleged "military necessity", over 110,000 persons of Japanese American ancestry, more than 70,000 of whom were American citizens, were herded into detention camps surrounded by barbed wire and machine gun towers and located in remote and desolate areas of the country. They received this unjust treatment without charge or trial, or any evidence of wrongdoing.

Solely on the basis of their racial ancestry, individuals lost their homes, businesses and personal property, endured the harsh life in the camps and suffered the shame and anguish of accusations of disloyalty to the United States. Property losses alone have been calculated to be between $1 and $2 billion.

Three American citizens, Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui challenged the constitutionality of the internment program, each believing that a grave injustice was being committed. In 1943 and in 1944, their cases came before the United States Supreme Court. In a series of landmark decisions, the United States Supreme Court upheld the legality of the internment, accepting the government representations that the internment camps were justified by "military necessity."

The Court's finding of "military necessity" was based on the representation of government lawyers that Japanese Americans were committing espionage and sabotage by signaling enemy ships from shore. The government also charged that it was impossible to separate the loyal from the disloyal due to the racial characteristics of Japanese Americans.[1]

While this was certainly not the first or only time in American history that a minority group had lost its freedom simply by reason of race, these Supreme Court decisions are the only cases in this century upholding an instance of invidious racial discrimination. It has been said that the hallmark of a democracy is its ability to correct its own mistakes. So it is appropriate that the

Congressional Commission on Wartime Relocation and Internment of Civilians concluded that a "grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II."

Further, Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui filed petitions for writs of error coram nobis, a petition to correct "fundamental errors", alleging that a fraud had been committed upon the Court, and that high government officials and the Justice Department lawyers knew that there was no factual basis for the claim of "military necessity."

The claims of Korematsu, Hirabayashi and Yasui were based upon documents recently discovered under the Freedom of Information Act, revealing that government attorneys suppressed key evidence and authoritative reports from the Office of Naval Intelligence, the F.B.I., the Federal Communications Commission, and Army Intelligence which flatly contradicted the government claim that Japanese Americans were a threat to security.

The Office of Naval Intelligence report issued in February of 1942, before the internment began, was the culmination of a two-year study of the West Coast Japanese American population. Authored by the ONI authority on Japanese Americans, Lieutenant Commander K. D. Ringle, the report concluded that only a small and readily identifiable portion of the Japanese American people were even potentially disloyal. "The entire Japanese problem has been magnified out of its true proportion largely due to the physical characteristics of the people."[2]

Edward Ennis, Director of the Alien Enemy Control Division of the Justice Department and the attorney responsible for supervising the drafting of the Justice Department brief in Korematsu v. United States, advised Solicitor General Charles Fahy in April of 1943 that, "We must consider most carefully what our obligation to the Court is in view of the fact that the responsible Intelligence Agency regarded selective evacuation as not only sufficient but preferable (to mass evacuation). I think we should consider very carefully whether we do not have a duty to advise the Court of the existence of the Ringle memorandum and of the fact that it represents a view of the Office of Naval Intelligence.... Any other course of conduct might approximate the suppression of evidence."[3]

In response to a request by Attorney General Francis Biddle to verify the accuracy of military claims of shore-to-ship signaling, J. Edgar Hoover wrote in February of 1944 before the Korematsu case was argued, "Every complaint (of shore-to-ship signaling and radio transmissions) has been investigated, but in no case has any information been obtained which would substantiate the allegation that there has been illicit signaling from shore to ship..."[4]

In response to a similar request, James Fly, the Chairman of the Federal Communications Commission, wrote in February of 1944:

"There were no radio signals...which could not be identified or which were unlawful."[5]

In a February 1944 memo to Attorney General Francis Biddle, Ennis criticized the Final Report of General J. L. DeWitt as being highly inaccurate in stating that Japanese Americans were committing acts of espionage and sabotage and were prone to disloyalty. He wrote, "(The Final Report) stands as practically the only record of causes for the evacuation and unless corrected will continue to do so. Its practical importance is indicated by the fact that it is being cited in the briefs in the Korematsu case in the Supreme Court...."[6]

Justice Department Attorney, John Burling, also responsible for drafting portions of the Korematsu brief, wrote in a memo to Assistant Attorney General Herbert Wechsler in September of 1944, "You will recall that General DeWitt's report makes statements concerning radio transmission and ship-to-shore signaling which were categorically denied by the F.B.I. and the Federal Communications Commission. There is no doubt that these statements are intentional falsehoods...."[7]

Burling attempted to alert the Supreme Court of the falsity of the military claims, particularly with respect to allegations of shore-to-ship radio transmissions, by inserting a footnote in the Korematsu brief stating that such allegations were in conflict with information in the possession of the Department of Justice. War

Department officials objected to Burling's footnote and the printing of the brief was stopped in midstream.[8] Despite protestations by Edward Ennis that the footnote should remain, the Justice Department ultimately omitted the footnote from the government's Korematsu brief.[9]

On November 10, 1983, in Federal District Court, Judge Marilyn Hall Patel ruled that the government's failure to substantively respond to Korematsu's petition was "tantamount to a confession of error."[10] Referring to the congressional report of the Commission on Wartime Relocation and Internment of Civilians and the documents attached to the Korematsu petition as exhibits, Judge Patel stated that the claim of military necessity justifying Executive Order 9066 was based upon unsubstantiated facts and distortions.[11]

On April 19, 1984, Judge Patel issued her written opinion formally vacating Korematsu's conviction.[12] Referring to the newly discovered government documents attached as exhibits to the petition, Judge Patel wrote, "The substance of the statements contained in the documents and the fact the statements were made demonstrate that the government knowingly withheld information from the courts when they were considering the critical question of military necessity in this case."[13] Citing the instance of the original Burling footnote which revealed that the Justice Department attorneys possessed reports contradictory to the allegations of espionage and sabotage, Judge Patel noted, "The record is replete with protestations of various Justice Department officials that the government had the obligation to advise the courts of the contrary facts and opinions. In fact, several Department of Justice officials pointed out to their superiors and others the "willful historical inaccuracies and intentional falsehoods" contained in the DeWitt Report. Judge Patel stated, "These omissions are critical."[14] Judge Patel continued, "Omitted from the reports presented to the courts was information possessed by the Federal Communications Commission, the Department of the Navy, and the Justice Department which directly contradicted General DeWitt's statements. Thus, the Court had before it a selective record."[15]

In concluding that coram nobis relief exists for a claim of prosecutorial impropriety,[16] Judge Patel wrote, "There is substantial support in the record that the government deliberately omitted relevant information and provided misleading information and papers before the Court."[17] "The judicial process is seriously impaired when the government's law enforcement officers violate their ethical obligations to the Court."[18]

Judge Patel closed by stating:

> Korematsu remains on the pages of our legal and political history. As a legal precedent it is now recognized as having very limited application. As historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the

> shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.[19]

In a decision dated February 10, 1986, Judge Donald Voorhees, of the Western District of Washington similarly found that the government failed to disclose crucial evidence and that Hirabayashi was "in fact very seriously prejudiced by that non-disclosure."[20] In making this finding, Judge Voorhees vacated Gordon Hirabayashi's conviction for violation of exclusion orders. In his order denying reconsideration, Judge Voorhees wrote:

> It is now conceded by almost everyone that the internment of Japanese-Americans during World War II was simply a tragic mistake for which American society as a whole must accept responsibility. If, in the future, this country should find itself in a comparable national emergency, the sacrifices made by Gordon, Hirabayashi, Fred Korematsu and Minoru Yasui may, it is hoped, stay the hand of a government again tempted to imprison a defenseless minority without trial and for no offense.[21]

The recent U.S. Supreme Court decision in U.S. v. Hohri, 55 U.S.L. Week 4716 (U.S. June 1, 1987), remanding to the Federal Circuit Court an appeal of the U.S. District Court's ruling that the statute of limitations barred relief for property losses incurred as a result of wartime internment, means at a minimum that satisfaction of certain claims of this aging group of victims will be delayed. It should be noted that even if such property claims are ultimately allowed to go forward, Japanese Americans are precluded from suing the government for personal injury, loss of business opportunity, false imprisonment or other torts.

The courts seem to be reaching a consensus that our government committed grave acts of misconduct and suppression of evidence before the Supreme Court. However, the prospects for full relief through litigation are still speculative. Regardless of the ultimate availability of relief through the courts, it is singularly appropriate that Congress enact promptly the legislation before you providing for appropriate redress, including monetary compensation, so that Japanese Americans might receive some measure of justice from the U.S. Government for their suffering.

While the American Bar Association has not recommended a specific amount of compensation, we do note that our courts have made such determinations in cases of wrongful imprisonment. We attach examples of compensation awards in this area that might be instructive.

The leading cases upholding the legality of the internment have now been discredited on the ground that the landmark precedents that were issued in 1943 and 1944 were based upon an incomplete and distorted legal record. As attorneys and officers of the court, members of the American Bar Association feel a special duty to ensure the integrity and strength of our basic freedoms. This obligation is even stronger when a Congressional Commission has found a grave injustice was committed, and the Federal Judiciary has found that the government intentionally manipulated the evidence to facilitate that injustice. Accordingly, the American Bar Association urges the Congress of the United States to support legislation which would provide appropriate recognition for Japanese Americans.

Mr. Chairman, on behalf of the American Bar Association, I would like to thank you and the Subcommittee for inviting us to present these views.

FOOTNOTES

1. Lt. Gen. J. L. DeWitt *Final Report: Japanese Evacuation From the West Coast 1942:* There were hundreds of reports nightly of signal lights visible from the Coast, and of intercepts of unidentified radio transmissions. Signaling was often observed at premises which could not be entered without a warrant because of mixed occupancy. The problem required immediate solution. It called for the applications of measures not then in being.'' Quote, at p.8. ''Because of the ties of race, the intense feeling of filial piety and the strong bonds of common tradition, culture and customs, this population presented a tightly-knit racial group. It included in excess of 115,000 persons deployed along the Pacific Coast. Whether by design or accident, virtually always their communities were adjacent to very vital shore installations, war plants, etc. While it was believed that some were loyal, it was known that many were not. It was impossible to establish the identity of the loyal and the disloyal with any degree of safety. It was not that there was insufficient time in which to make such a determination; it was simply a matter of facing the realities that a positive determination could not be made, that an exact separation of the 'sheep from the goats' was unfeasible,'' at p. 10. See also *Hirabayashi v. the United States*, 320 U.S. 81 at p. 99, "Whatever views we may entertain regarding the loyalty to this country of the citizens of Japanese ancestry, we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted and menace to the national defense and safety...''

2. "Report on the Japanese Question", by Lt. Commander Kenneth D. Ringle, U.S. Navy, Office of Naval Intelligence, January 26, 1942.

3. Memorandum from Edward Ennis (Director, Department of Justice Alien Enemy Control Unit) to Solicitor General Fahy, April 30, 1943.

4. Memorandum from J. Edgar Hoover, Director, Federal Bureau of Investigation, to Attorney General Frances Biddle, February 7, 1944.,

5. Letter from F.C.C. Chairman James L. Fly, to Attorney General Francis Biddle, April 4, 1947, at p. 3.

6. "Memorandum for the Attorney General Re: General DeWitt's Final Report on Japanese Evacuation", from Edward J. Ennis to Francis Biddle, February 26, 1944.

7. Memorandum from J. L. Burling to Asst. Attorney General Herbert Wechsler, September 11, 1944.

8. Memorandum from J. L. Burling to Asst. Attorney General Herbert Wechsler, September 11, 1944; memorandum from J. L. Burling to Edward Ennis, October 2, 1944.

9. See Korematsu v. the United States, 584 F. Supp. 1406 (1984) at 1417 and 1418. Judge Patel notes regarding the footnote revision: "The final version made no mention of the contradictory reports. The record is replete with protestations of various Justice Department officials that the government had the obligation to advise the courts of the contrary facts and opinions. Petitioner's Exhibits A to FF. In fact, several Department of Justice officials pointed out to their superiors and others the 'willful historical inaccuracies and intentional falsehoods' contained in the DeWitt Report."

10. Transcript from proceedings of "Motion to Vacate Conviction and Dismiss Indictment of Fred T. Korematsu before the Honorable Marilyn Hall Patel", San Francisco, California, November 10, 1983, at p. 35.

11. Transcript from proceedings of "Motion to Vacate Conviction and Dismiss Indictment of Fred T. Korematsu Before the Honorable Marilyn Hall Patel", San Francisco, California, November 10, 1983, at p. 37.

12. Korematsu v. the United States, 584 F. Supp 1406 (N.D. Cal. 1984), at p. 1409

13. Ibid., p. 1417.

14. Ibid., p. 1418.

15. Ibid., p. 1419.

16. Ibid., p. 1420.

17. Ibid.

18. Ibid.

19. Ibid.

20. Hirabavashi v. the United States, February 10, 1986 No. C83-122V at page 33.

21. Hirabavashi v. the United States, April 28, 1986 No. C83-122V at page 13.

ATTACHMENT

Examples of damages allowed for false imprisonment might be illuminating, in considering the cases of Japanese Americans confined in detention centers for periods of up to four years, as follows:

AWARD	DETAINED	CASE:
$ 900 3,200	False imprisonment for 1-3 days for the 1971 May Day antiwar protest. Total appropriation: $3,150,000	Dellums v. Powell 566 F.2d 167 C.A., D.C. Circuit
$ 50,000	Arrest after scuffle and detained for less than 1 day.	Bucher v. Krause 200 F.2d 576 7th Cir. 1952
$112,000 112,290	Wrongfully convicted of murder, and served 12 years in prison.	Hoffner v. State 207 Misc. 1070 142 N.Y.S. 2d 630 Ct. Cl. 1955
$ 10,000 +10,000	Assaulted and detained by employer who charged shoplifting	Skillern vs. Stewart 379 S.W. 2d 687, Tex. Civ. App. 1964
$ 10,000 +500	Roughly handled and briefly detained	Quinn v. Rosenberg 399 S.W. 2d 433 Mo. App. 1966
$ 20,000	Wrongfully imprisoned for murder and on death row for 2 months; total time in prison, 4 years.	State v. Vargas 419 S.W. 2d 926 Tex. Civ. App. 1967
$100,000 Reduced to $65,000	Store owner jailed for disturbance in evicting competitors who were checking prices	S.S. Kresge Co. v. Prescott 435 S.W. 2d 203, Tex. Civ. App. 1968
$400,000 Reduced to $75,000	Woman jailed for 3 days for refusal to pay hotel bill until moving out	Rothschild v. Drake Hotel 97 F. 2d 419, 7th Circ. 1968
$ 35,000	False imprisonment for 5-6 hours	Globe Shopping v. Williams Tex. Civ. App. 1976

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$ 10,000	Compensatory damages for 3-hour detention, on basis of loss of earnings and mental suffering	Guion v. Ass. Dry Goods 56 App. Div. 2d 798 393 N.Y.S. 2d 8, 1977
$ 5,000 10,000	Actual damages, plus punitive damages for 2 1/2 hours detention on accusation of shoplifting	Joseph v. Jefferson Store 228 So. 2d 103, Fla., Dist. Ct. App. 1969
$ 1,500	Jailed for refusal to hand over driver's license on arrest for violating dog leash ordinance	Enright v. Groves 560 P. 2d 851, Colo, App. 1977
$ 40,000	23 Day commitment to mental institution by psychiatrist; award for pain and suffering.	Stowers v. Wolodzko 386 Mich. 119, 191 N.W. 2d. 355, 1971

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STATEMENT OF

WADE J. HENDERSON
ASSOCIATE DIRECTOR
AMERICAN CIVIL LIBERTIES UNION
WASHINGTON OFFICE

ON BEHALF OF

THE AMERICAN CIVIL LIBERTIES UNION

ON

S.1009

TO ACCEPT THE FINDINGS AND
IMPLEMENT THE RECOMMENDATIONS OF THE
COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

BEFORE

UNITED STATES SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE

JUNE 17, 1987

Mr. Chairman and Members of the Subcommittee:

I am Wade J. Henderson, Associate Director of the American Civil Liberties Union Washington office.

I appreciate the opportunity to appear before this Subcommittee to present the views of the American Civil Liberties Union concerning S.1009, a bill to implement the recommendations of the Commission of Wartime Relocation and Internment of Civilians. The ACLU is a nationwide, non-partisan organization of more than 275,000 members devoted to protecting the Bill of Rights. For more than forty years, the ACLU has been involved in litigation and other activities intended to obtain redress for persons of Japanese ancestry who were wrongly subjected to internment orders during World War II. In this bicentennial year of our nation's Constitution, it is particularly appropriate that Congress reaffirm our commitment to fundamental values through enactment of S.1009.

Background

History has shown that war is seldom a congenial time for civil liberties. During the Civil War, for example, President Abraham Lincoln summarily suspended the writ of habeas corpus in the name of national security and ignored the United States Supreme Court Chief Justice Taney's ruling that the suspension was unconstitutional. See, Ex parte Merryman, 17 Fed. Cas. 144 (No. 9487)(1861). During World War I, the great libertarian Justice Oliver Wendell Holmes ignored the legitimate First Amendment claims of several antidraft pamphleteers who had been labeled as criminals for expressing their views. See, Frohwerk

v. U.S., 249 U.S. 204 (1919).

But, by far, the most profound product of wartime hysteria in this country was the forced evacuation of 120,000 American citizens and resident aliens of Japanese origin from the west coast of the United States, and their prolonged confinement, without cause, in internment camps. This mass evacuation and detention of American citizens was a national tragedy and the greatest deprivation of liberty since slavery.

On February 19, 1942, ten weeks after the Pearl Harbor attack by Japan, President Franklin D. Roosevelt signed Executive Order 9066 which gave to the Secretary of War and the military commanders to whom he delegated authority the power to exclude any and all persons, citizens and aliens, from designated military areas.

Shortly thereafter, all American citizens of Japanese descent were prohibited from living, working or traveling on the west coast of the United States. The same prohibition applied to the generation of Japanese immigrants who, pursuant to federal law and despite long residence in the United States, were not permitted because of race to become American citizens. See, Ozawa v. United States, 260 U.S. 178 (1922). It did not apply to other groups, however. No mass exclusion or detention in any part of the country was ordered against American citizens of other "enemy" nationalities, either German or Italian.

Initially, the Japanese exclusion was to be carried out by "voluntary" relocation. The policy inevitably failed, however, and these American citizens and their parents were removed by the Army, first to "assembly centers," i.e. temporary quarters at racetracks and fairgrounds; and then to "relocation centers," i.e. bleak barrack camps, mostly in desolate areas of the West. The camps were surrounded by barbed wire and guarded by military police.

The policy of exclusion, removal, and detention of Japanese Americans was executed without individual review. The exclusion was continued virtually without regard for the demonstrated loyalty of suspected individuals to the United States. All this was done in the name of national security and despite the fact that not a single, documented act of sabotage was committed by an American citizen of Japanese ancestry or by a resident Japanese alien on the West Coast.

In the early 1940's, United States Army Lieutenant General John L. DeWitt, the Commanding General of the Western Defense Command, unilaterally determined that the presence of United States citizens of Japanese ancestry on American soil constituted a grave threat to national security. This claim of "military necessity" was based on racial bigotry and was contrary to the evidence available to the government on this subject. The government's claim of "military necessity" was the foundation of the United States Supreme Court's decisions in Korematsu v. United States, 323 U.S. 214 (1944) and Hirabayashi v. United States, 320 U.S. 81 (1943), which upheld the constitutionality of the exclusion program.

In these cases, the War Department purposely concealed from the Supreme Court the fact that all of the studies conducted by the FBI, FCC and Naval Intelligence contradicted DeWitt's unfounded conclusions.

These acts of concealment by the War Department were not discovered until 1981. In that year, Professor Peter Irons, while conducting research for a book, uncovered the previously concealed information detailing the conspiracy within the Executive Branch to defraud justice. Peter Irons, Justice At War (1983). See also, Korematsu v. United States, 584 F. Supp. 1406, 1420 (N.D.Cal. 1984) (government's withholding of crucial information and misleading the Court about the accuracy of DeWitt's report results in a "judicial process ... seriously impaired (because) the government's law enforcement officers violate their ethical obligations to the Court").

The detention of Japanese Americans and lawful resident aliens was a grave injustice, unsupported by factual basis. All three branches of government emerged from the experience with sullied reputations and the constitutional fabric of the United States remains to this day badly stained.

Redress Denied

After the conclusion of World War II, Congress acted to authorize a program of compensation for some of the financial losses entailed by evacuation from the West Coast. The American-Japanese Claims Act, enacted in 1948, authorized compensation for damages to or loss of real or personal property as "a reasonable natural consequence of the evacuation or exclusion of" persons of Japanese ancestry as a result of governmental action during World War II. 50 U.S.C. App. Sec. 1981-1987. However, post-war racism rendered the Claims Act something substantially less than effective redress. Ultimately, 26,568 settlements were achieved, many of which settled claims were presented by family groups rather than individual claimants.

In 1975, President Gerald Ford formally revoked Executive Order 9066, issued by President Roosevelt in 1942 to permit exclusions from the West Coast. That same year Congress repealed Public Law 77-503, which was enacted in 1942 to ratify Executive Order 9066. In repealing the Executive Order, President Ford stated that the wartime exclusions were a mistake. History and justice demand more.

The Commission on Wartime Relocation and Internment of Civilians was established by Congress in 1980 to review the facts and circumstances surrounding Executive Order 9066 and assess the impact of the Executive Order on American citizens and permanent resident aliens. In addition, the Commission was charged to review directives of U.S. military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including Aleut civilians and permanent resident aliens of the Aleutians and Pribilof Islands. It was also asked to recommend appropriate remedies.

In fulfillment of its principle mandate, the Commission submitted to Congress in February 1983 a unanimous report, Personal Justice Denied, which reviewed the circumstances of the decision to evacuate and detain Japanese Americans, as well as the treatment of Aleuts during World War II.

In establishing its findings, the Commission carefully examined the central contention behind Executive Order 9066, i.e., the government's decision to exclude ethnic Japanese from the West Coast was justified by the concept of "military necessity." Not surprisingly, the Commission found little justification for the military necessity rationale. Moreover, the Commission found that a virulent wartime racial hysteria was evident in the decision to detain Japanese Americans. An appreciation of the turbulent history of anti-Japanese agitation in this country is an essential element in understanding the debates within the government that preceded the signing of Executive Order 9066.

The Commission found that victims of the internment suffered enormous damages and losses, both material and intangible. There was a disastrous loss of farms, businesses and homes. To this must be added the collateral disruption of careers and professional lives for many years following the evacuations.

An analysis of the economic losses suffered as a direct consequence of the exclusion and detention was performed for the Commission. It is estimated that, as a result of the exclusion and detention, in 1945 dollars the ethnic Japanese lost between $108 and $164 million in income, and between $41 and $206 million in property for which no compensation was made after the war under the terms of the Japanese-American Evacuation Claims Act. Adjusting these figures to account for inflation alone, the total losses of income and property fall between $810 million and $2 billion in 1983 dollars.

The equation of just compensation for the victims must also include intangible factors. To these figures must be added the injury of unjustified stigma that hangs over the victims of the internment policy, and the irreparable loss of self-esteem to ethnic Japanese. No price can be placed on these fundamental deprivations.

The Commission wrestled with these factors. They presented complex problems for which there are no easy solutions. It is difficult to price the enormity of the loss or to concretize just compensation, however, it is important to aggressively pursue a solution.

The Commission's recommendations were structured in several forms to acknowledge the wrongs inflicted during the war upon the ethnic Japanese and to serve as a national apology from our government to its citizens. These provisions have been fully incorporated in S.1009, "The Civil Liberties Act of 1986."

An Intent to Deceive

After Executive Order 9066 was issued on February 19, 1942, the ACLU and its West Coast affiliates immediately became involved in myriad problems created by various military restrictions (including curfew and expulsion orders) issued under the Executive Order. Defense was provided against the prosecutions brought to enforce the military curfew and exclusion orders in which convictions were obtained. Gordon Hirabayashi received a three-month jail sentence for violating an 8 P.M. to 6 A.M. curfew order. Fred Korematsu was given a suspended sentence and placed on probation for five years for failing to obey an order excluding all persons of Japanese ancestry from a military area. Both convictions were affirmed by the U.S. Supreme Court. Hirabayashi v. United States, 320 U.S. 81 (1943) and Korematsu v.

United States, 323 U.S. 214 (1944).

The Department of Justice performed its duty to represent the government in all litigation, and successfully defended the constitutionality of the evacuation in the district courts, Courts of Appeal, and the United States Supreme Court. The War Department on its part, however, concealed from the Department of Justice that it had prepared a report on the evacuation, "Final Report Japanese Evacuation from the West Coast 1942," which asserted factual support for the evacuation which was incorrect and untrue.

When the Department of Justice heard that such a report was being prepared, which included statements of DOJ conferences and activities, it asked for an opportunity to review the document before publication, but was informed at first that the report was a private communication from General DeWitt not to be published. Later, it was said that it was too late for any reviews. It was published without review or corrections when the Korematsu case was in the Supreme Court. The only course then available to the Department of Justice was to advise the Court in a footnote to its brief that the Final Report was relied upon only for statistics and details concerning the actual conduct of the evacuation, and that the Government relied only on facts stated in the brief as justification for the evacuation.

The brief did not state that the Final Report was false and inaccurate on statements of justification for the evacuation. The Final Report, however, was distributed by the War Department to the Attorney General of California, Oregon and Washington so that they had access in Supreme Court briefs to the erroneous statements of justification for the evacuation.

This conduct strikingly disclosed the War Department's own doubts about judicial acceptance of the justification for the evacuation which it had swallowed whole from DeWitt. This factual situation has finally come to public attention. A U.S. District Court has granted a writ of coram nobis setting aside the convictions of Fred Korematsu for not obeying an exclusion order on the grounds that the factual justification for the evacuation had not been fairly presented to the courts, Korematsu v. United States, 584 F. Supp. 1406 (N.D. Cal. 1984).

Recently, the U.S. District Court in Los Angeles held a full hearing on Gordon Hirabayashi's petition, and on February 10, 1986, District Judge Voorhees vacated the failure-to-report conviction, but left untouched the conviction for curfew violation, Hirabayashi v. United States, 627 F. Supp. 1445 (W.D. Wash. 1986). He held that the government should have provided Hirabayashi a copy of General DeWitt's "Final Report" because it revealed the racial basis for "interning" and "relocating" Japanese Americans and the government's failure to attempt to identify any real security risks. The Washington Post of February 12, 1986, p. A3, quoted from Judge Voorhees' opinion:

> In his decision, Voorhees said, "nothing would have been more important to (Hirabayashi's) counsel than to know just why it was that Gen. DeWitt made the decision that he did... Disclosure...would have made it most difficult for the government to argue, as it did, that the lack of time made exclusion a military necessity."

Although there is presently litigation pending seeking damages for the internees and their heirs, the Supreme Court has recently refused to hear the issues until it is re-litigated in lower courts (United States v. Hohri, No. 86-510, June 1, 1987), so it will be several years before the issue can be resolved. In the light of this further delay of justice, legislation is all the more necessary.

The ACLU believes that this bill includes several valuable provisions for the protection of civil liberties. These include (1) the recognition of significant civil liberties violations which this bill provides for and the recognition and repudiation of the racial prejudice which caused them; (2) the redress of individual violations of civil liberties by requiring the Attorney General to review certain criminal convictions with a view towards pardon recommendations, pardons which would both help to repair the injury done to individual reputations and represent a commitment to justice in the individual cases; (3) the establishment of a Civil Liberties Public Education Fund which would enact a commitment in this 200th year of the United States Constitution, to full and fair compensation for the deprivation of property and wrongful deprivation of constitutionally-guaranteed liberties.

The question of financial compensation for the victims of the internment should be self-evident. The economic loss of ethnic Japanese as a result of the exclusion and detention is well documented. See, "Economic Losses of Ethnic Japanese As a Result of Exclusion and Detention, 1942-1946," Prepared for the Commission on Wartime Relocation and Internment of Civilians, by Frank S. Arnold, Michael C. Barth, Gilah Langer, June 1983.

Simple justice demands financial compensation to the victims. Several years ago, for example, demonstrators in Washington, D.C. against the Vietnam war were awarded damages in court for their temporary detention by the police. Congress appropriated millions of dollars to pay for this very temporary detention. Can we do less for the victims of so massive an injustice as the wartime internment? We believe not.

Angus Macbeth, former Special Counsel to the Commission on Wartime Relocation and Internment of Civilians has framed the issue with particular eloquence:

> It is central to the Commission's aims that the old wounds of World War II be healed. The exclusion and detention will not be forgotten by those who lived through that time. It is important that a way be found to write the end of this history that closes it with a reaffirmation of the basic American principles of equal individual justice and a willingness to repair the errors of the past. The Commission believed that could best be done not by dwelling on distinctions that are often illusory and minor in comparison to the central events of 1942-1945, but by an act of magnanimity that will make the healing act of closure manifest.

Letter from Angus Macbeth to Honorable Charles E. Grassley (August 3, 1983).

It takes the government of a great sovereign people, which cannot be coerced, voluntarily and magnanimously to admit a wrong and grant amends well within its means. The ACLU strongly believes that ours is such a government. We urge this Subcommittee to approve S.1009 in its present form.

Statement

of

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

on

S.1009

A bill "To accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians"

BEFORE THE

Subcommittee on Federal Services, Post Office, and Civil Service
Committee on Governmental Affairs

UNITED STATES SENATE

June 17, 1987

The Anti-Defamation League of B'nai B'rith appreciates the Subcommittee's invitation to present its views on S.1009, a bill "To accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians."

The ADL was organized in 1913 to advance goodwill and mutual understanding among Americans of all creeds and races, and to combat racial and religious prejudice in the United States. The Anti-Defamation League is vitally interested in protecting the civil rights of all persons, and in assuring that every individual receives equal treatment under the law regardless of his or her race, religion, sex or ethnic origin.

Since its inception in 1913, the ADL has espoused a principle against discrimination: "to secure justice and fair treatment to all citizens alike." In keeping with this principle, ADL has intervened in numerous landmark cases urging the unconstitutionality or illegality of racial practices in such cases as, e.g., Brown v. Board of Education, 374 U.S. 483 (1954) and San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973).

Due to ADL's concern with combatting racial discrimination, the League is committed to eliminating to the extent possible all effects, both retrospective and prospective, of the Japanese-American internment. In this regard, for years ADL has consistently supported legislative remedies concerning the internment of Japanese-Americans during World War II, including legislation supporting a full Commission investigation, provision for just compensation, and legislation to eliminate the precedential effect of the wartime convictions by barring all possible future internment actions based on race, religion, sex or national origin. Because of ADL's commitment to eradicating the ongoing stigma and other emotional effects of the Japanese-American internment, the League intervened as amicus curiae, together with the Asian American Legal Defense and Education Fund, in support of Fred Korematsu and Gordon Hirabayashi in their successful challenges of criminal convictions pursuant to Executive Order 9066. ADL also participated as amicus in the case of Hohri v. United States, recently remanded on procedural grounds to the district court.

The Korematsu and Hirabayashi decisions recognize the injustice of the Japanese-American internment. In overturning the wartime convictions, these decisions expressly rejected the so-called "military necessity" claim. This claim, used to imprison citizens of Japanese-American descent without a hearing, was held simply to be a cloak for government wrongdoing.

The ADL's longstanding commitment reflected in our amicus and other work brings us before Congress today in support of S.1009. The ADL believes this proposal is an appropriate remedy for the World War II deprivations suffered by the internees. Monetary compensation accorded to the surviving victims of the internment camps is a minimum redress. History and justice demand no less.

The redress proposal considered today is a Congressional response to the findings and recommendations of the Commission on Wartime Relocation. That Commission found that the United States Government's policy of exclusion, removal and detention of Japanese-Americans for two-and-a-half years in isolated barrack camps guarded by military police constituted a great injustice. It was not justified by any military considerations. Instead, it was the product of racism and prejudice. The Korematsu and Hirabayashi cases took the findings one step further, holding there was widespread government misconduct.

The ADL's support for the establishment of the Commission is well known. We feel particularly proud that when the Senate Committee on Governmental Affairs reported out the legislation to establish the Commission, S.Rept. 96-751, 96th Cong. 2nd session, May 15, 1980, the Committee singled out the statement ADL submitted to the Committee in support of the legislation as setting forth "succinctly the rationale for a Commission." While the Senate report quotes substantial portions of our statement, one paragraph is especially relevant to today's hearing:

> Many people believe the attack on Pearl Harbor was the justification for this relocation of Japanese Americans. In fact, military necessity was the reason given by the government for this action. But, if national security was the rationale, why were Japanese-Americans in Hawaii not similarly interned, and why were German and Italian aliens not subjected to similar restrictions? Why were Japanese Americans subjected to wholesale internment when no person of Japanese ancestry living in the United States, or the then-territories of Alaska and Hawaii, had ever been charged with any act of espionage or sabotage prior to the issuance of the Executive Order, nor, indeed, at any time thereafter? Why, therefore, was this group of civilians singled out and deprived of liberty and property without criminal charges or a trial of any kind?

Answering this question was the mandate of the Commission. And its findings supported the League's belief both then and now -- the internment resulted from the consequences of prejudice and discrimination directed against persons of Japanese ancestry.

The Commission found that the internees suffered enormous losses. First and foremost was the loss of personal liberty -- as well as income and property losses. Added to these losses were the effects of lost educational and career opportunities, and those less tangible losses such as the emotional injury resulting from separation from loved ones, and the ongoing stigma of exclusion and the accompanying feelings of second-class citizenship.

These losses would appear to be incalculable. As the Commission noted, no amount of money can fully compensate the victims for their sufferings. Still we must try. To date, only a minimal amount has been provided for some property losses. No compensation has been given for the massive deprivations of liberty — though our legal system contemplates compensation to acknowledge such harms. Accordingly, to fail to provide redress is to fail to recognize those harms that we as a nation inflicted on our citizens and lawfully resident aliens. And this we may not morally or legally do. The statute of limitations should be tolled in light of government concealment of unlawful conduct.

What then may stop our path? Redress for these injustices has been challenged on the ground that other injustices also lie in our American history. To be sure, there have been other injustices. But it is this injustice, suffered by an identifiable class of persons now surviving, which is being considered by this Subcommittee today. And it is this injustice which would be cured, at least symbolically, by the redress provided in S.1009. As Attorney General Edwin Meese has noted, injustices suffered by an identifiable class of victims of direct discrimination may demand a government remedy. And this is the case with those Japanese-Americans still living today who suffered a fundamental deprivation of freedom, not repeated in our country since the tragic days of slavery. The injury will continue until we provide redress.

In pursuit of redress we now look to Congress, in the words of Judge Patel, vacating the Korematsu conviction, to "take the leadership" so as to "protect all citizens" from those "fears and prejudices. . . so easily stirred up" during the time of war which in retrospect divided our great nation.

Obtaining redress in the pursuit of justice cannot merely be the victims' problem. It is our national problem because we may no longer ignore our history. The ADL, a longstanding opponent of racial and ethnic prejudice, and advocate for the protection of civil liberties for all minorities in our country is committed to securing this redress. We believe it is essential not only to provide some redress to victims of an acknowledged injustice, but also to ensure that a similar injustice may never happen again.

Thank you for the opportunity to express our views on this much needed and meritorious legislation.

OPPOSITION TO S.1009, April 10, 1987

STATEMENT OF LILLIAN BAKER

U.S. SENATE GOVERNMENTAL AFFAIRS

FOR INCLUSION AS TESTIMONY: HEARING OF JUNE 17, 1987

During World War II, millions of Americans were called upon to make wartime sacrifices, including the loss of homes, businesses, loved ones, loss of ordinary civil rights, postponement of educational and employment opportunities, as well as mental and physical suffering brought about by wartime events.

One of the events which caused one of the many hardships equally suffered in one way or another by all Americans during WWII, was the exclusion from the West Coast "red zones" of all persons of Japanese descent.

Forty-plus years after this event, Americans are asked to apologize for an action upheld as constitutionally correct in wartime, by our United States Supreme Court. Americans are asked to pay monetary reparations to those inconvenienced or who suffered various types of losses because of a wartime action deemed necessary for public safety and national security.

Americans are expected to accept historical revisionism instead of documented evidence newly produced by the broadened Freedom of Information Act of 1977, and broadened further by the 1980's. Americans are asked to set aside the U.S. Supreme Court decisions which upheld curfew unanimously, and upheld the exclusion order 6-3. Instead of the legally constituted Court established by our Constitution, Americans are asked to decide an issue "settled in the court of history".

Americans are expected to applaud their elected officials who by and large seem willing to accept the "findings and recommendations" of a rigged Commission on Wartime Relocation and Internment of Civilians, whose final report, "Personal Justice Denied" contains predetermined conclusions published in various ethnic newspapers months before a single witness was called or hearing held. One of the Commissioners who served on the CW[illegible]C admitted in the Los Angeles Times (Sat.,July 4, 1987), that several Japanese-Americans declined to testify before the CWRIC "because of the tremendous pressure put on those who dared to disagree" with the CWRIC or the proponents of "redress and reparations".

When the CWRIC's report, "Personal Justice Denied" was published, the editor of THE JAPAN TIMES called the report, "A FALSIFICATION OF HISTORY". This editor should know, considering he was a Japanese evacuee during WWII who spent 3 months in a relocation center before leaving to finish his college education during WWII. He was joined by almost 4,000 other evacuees who spent the war years at colleges and universities -- coming out of the WRA centers. Yet Americans are asked to apologize for "incalculable losses in education and job training".

Americans are supposed to tolerate terms which denigrate the United States, terms such as "concentration camps, USA", "survivors", "prisoners" and other such catch-words that stir emotional outrage. Milton Eisenhower, the first Director of the War Relocation Authority, wrote the writer this Statement in a letter (1982), how disturbed he was to read in the newspapers stories of Japanese-Americans "returning from the war to find their parents in 'concentration camps' and behind 'barbed wire'..."

Mr. Eisenhower asked, "WHAT CAN BE GAINED BY SUCH LIES!"

When the chairman of the Subcommittee of the Committee of Appropriations, House of Representatives, 77th Congress (1943), questioned Mr. Eisenhower regarding the $70,000,000 supplemental appropriation for the War Relocation Authority, as follows:

MR. CHAIRMAN: "There is nothing you are doing which could, by the most liberal interpretation, be construed as a failure to comply with all the provisions of the Geneva Conference in reference to these evacuees?"

MR. EISENHOWER: "Mr. Chairman, the Geneva Convention does not apply to American citizens or to evacuees generally; it applies legally to prisoners of war and, by unilateral declaration of the U.S., as I understand it, to internees. THE RELOCATION CENTERS ARE NOT CONCENTRATION CAMPS OR INTERNMENT CAMPS. I WISH TO EMPHASIZE THAT THE EVACUEES ARE NOT PRISONERS OF WAR OR INTERNEES." [Emphasis added]

Mr. Eisenhower then continued: "+ + + as soon as the relocation centers are built we will announce in the States where the voluntary evacuees now reside, such as Colorado and Idaho, that the voluntary evacuees may come to the relocation centers and live there for the duration of the war. It is my considered opinion that a substantial percentage of them will come + + +"

And hundreds of families from the 44 States unaffected by the exclusion order on the West Coast, plus the abovementioned evacuees who voluntarily left the evacuated area to reside in others States, did accept the government invitation to reside in peace and security at the War Relocation Centers.

At the same time, the evacuees who would take a loyalty oath, and who had employment or educational pursuits away from the WRA centers, left from mid-1943 at the average of 1,000 per week. Many of them took jobs in war industries, leaving their alien Japanese Nationals and young brother or sisters to reside in the WRA centers. None of those who relocated brought charges against the WRA, the military, or the U.S. government for the so-called "atrocities" cited in the media and testimony given by those who never even experienced the evacuation, or were too young to make decisions for themselves.

War brings sufferings to most people. Constitutional privileges given to Americans does not come without sacrifice. With citizenship comes responsibilities, and the burden of those responsiblities is always heavier in wartime. Persons of Japanese descent were not denied habeus corpus, providing they were Americans. Our U.S. Constitution does not extend "civil rights" to alien enemies, such as Japanese Nationals who were residing in the United States after declaration of war with Japan.

The CWRIC's report wholly contradicts the findings and the opinion of our United States Supreme Court, with regard to both the exclusion and internment of persons of Japanese descent.

In this bicentennial celebration of our U.S. Constitution, it would do well to remind the Congress that it is the Judicial Branch of our government that decides constitutional issues, and not a politically motivated Commission whose practices and procedures have been justly described as "as solemn public lie".

Page 4. OPPOSTION TO S.1009, April 10, 1987
STATEMENT OF LILLIAN BAKER/For inclusion as testimony: Hearing 6/17/87

The CWRIC's findings stated that "racism" was the cause of the exclusion order, E.O.9066, Feb. 1944.

The United States Supreme Court, stated that the evacuees were not excluded because of their race but because we were at war with the Empire of Japan, whose military forces were a threat to our West Coast. "Racism" could not be the cause, since persons of Japanese descent were not excluded from any States other than Western Washington, Oregon, ~~Oregon,~~ California and part of Arizona.

The CWRIC's findings state that the evacuees were "internees" and "prisoners". Neither is true. The Supreme Court clearly stated that neither in fact nor by law were evacuees required to go from an assembly center to a relocation center and many thousands did not.

Testimony accepted without documented proof and under no legal oath, relates incidents of "lack of medical care", the "separation of parents from children", and other stories labelled "atrocities" by the liberal media and some proponents for redress and reparations. Documentation shows that the highest live-birth rate and lowest incidence of disease anywhere in the United States during WWII, was in the relocation centers.

It is time, perhaps, for the Congress to call upon witnesses who would take an oath to tell facts, based on personal experience and documented evidence. Americans are accused of incidents that cannot be substantiated by documentation. Americans are determined by the CWRIC to be guilty of charges on mere hearsay and by testimony of those either too young to remember WWII, or who weren't even born at the time.

The CWRIC's report has been described by the son of evacuees as historically dishonest and filled with political posturing. Kiyoaki Murata wrote, Aug. 13, 1982: "The Commission report is one-sided, incomplete and unfair...its purpose was to condemn the U.S. government's actions and recommend payment of compensation to the 'victims'. The inquiry was like a trial where the accused is presumed guilty from the outset.+ + + History falsified to win relocation pay..."

The "inquiry" by the CWRIC was, indeed, predetermined that the U.S. government and Americans were guilty from the onset. Thus the CWRIC's findings and recommendations provide no decent basis for just and honest legislation. -- DOCUMENTATION ATTACHED.

DOCUMENT #1
Re: S1009, April 10, 1987 DOCUMENTED CASES OF DISLOYALTY
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.

For inclusion with written STATEMENT by Lillian Baker.

Source: U.S. Archives, A8-3/RF37/(B-7-C) Confidential, Jan. 30, 1943, Headquarters, Thirteenth Naval District, Seattle, Washington

From:	The District Intelligence Officer Thirteenth Naval District
To:	The Director of Naval Intelligence
Subject:	Japanese Activities at Minidoka Relocation Center

+ + + On January 23 and 24 (1943), "Mike" Masaru MASAOKA, National Secretary of the Japanese American Citizens League visited Minidoka. At a J.A.C.L. meeting held on January 23 (1943), MASAOKA declared that the organization of the Civil Liberties League was a "stab in the back" at the efforts of the J.A.C.L. Most of the Seattle Chapter leaders of the J.A.C.L. have opposed the YASUI committee right along, contending that to help YASUI would be un-American + + + MASAOKA...argued that it was the duty of the nisei to cooperate with the government, not to fight it.

The president of the former Seattle chapter of the J.A.C.L. on being questioned as to his views stated, "YOU MUST REMEMBER YASUI WAS A RESERVE OFFICER IN THE UNITED STATES ARMY WHILE AT THE SAME TIME BEING ADMITTEDLY A PAID AGENT FOR JAPAN-- YOU MUST REMEMBER THIS IS WAR, AND TO AID YASUI IS TO AID A JAPANESE AGENT. SUCH AN ACT IS NOT AMERICAN." + + +

YASUI, deceased 1987, was the leader of the National Coalition for redress and reparations. When YASUI violated curfew (Oregon), he was not denied habeas corpus. Instead, the case went to the U.S. Supreme Court and in Nov. 1943, the court upheld curfew unanimously. When YASUI re-opened the case in Oregon, the judge refused to vacate the lower court and U.S. Supreme Court decision. The Yasui family is appealing the decision. Min Yasui was working in Japan's Consulate Office, Chicago, the day of Pearl Harbor. YASUI was also classified "Class A", rejected for induction because "Class A" evacuees were troublemakers, anti-American agitators,etc.

"Mike" Masaoka, 40 years later, joined Yasui and worked closely with Yasui and the National Coalition for Redress/Reparations.

DOCUMENT #2 (consisting of 2 pages)

Re: S1009, April 10, 1987 DOCUMENTED CASES OF DISLOYALTY
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair. For inclusion with the written Statement of Lillian Baker.

Source: Guy Cook Collection, Pacific Center for Western Studies, Stuart Library, University of the Pacific, Stockton, California

A TRUE COPY

Central Union High School
Fresno, California
January 4, 1946

Messrs. Sam and Kenneth Sakata
7306-B
Newell, California (Tule Lake Segregation Center)

Dear Sam and Kenneth:

I have your air mail letter of December 26, 1945, and was very saddened to learn that you two former Central Union High School students had committed the crime of denouncing your American citizenship and that you had requested to be sent to Japan to live.

I feel I cannot help you in the matter of being deported from the United States; as a matter of fact, I feel there is no alternative but that you go through with your written request to be sent to Japan. You indicated that you signed this application with reluctance, however, you must have been well informed by your parents of the condidtions in Japan as compared with life in a democratic country such as ours. You also indicated that considerable pressure was exerted on you, probably with the threat of physical violence if you would not fall in line with this "propaganda group" as you called it. I am sure you were aware of the fact that while this sort of thing was happening in the camp where you were cared for by the benevolent United States Government, there were other Nisei fighting for the same country, some of them whom you know very well have given their lives for the country you renounced, the country they loved so dearly.

You asked for a statement as to the quality of your citizenship here at school. We cannot make such a statement as there were no incidents to test your citizenship.

With the above in mind, I regret to repeat I have no alternative other than to recommend that you be deported to Japan. With great sincerity, I wish to point out to you two Central Union High School students that you will have the opportunity to take to Japan even in a small measure the attitudes of this country which places supreme importance on the value of the individual. You two will also be able to speak for the good intentions of the United States since you have received such splendid treatment by this Government in spite of the fact that you were considered aliens. This as you know, was not the case in Japan which under the domination of the War Lords was badly mistreating American citizens.

It is very difficult to write a letter of this sort and I hope you will consider me sincere when I say I felt it my duty to write as I have; that it did not come from any ill feeling on my part toward either of you as we always follow the activities and successes or failures of Central students with a great deal of interest and satisfaction or regret as the case may be.

I shall be pleased to have letters from you telling me what you are doing, what you are thinking and how you are being treated.

As per your request, your letter was presented to the faculty and they concur with me in the above statements as indicated by their signatures affixed below.

Sincerely yours,
(signed) W. H. Spillers, Principal
Central Union High School

cc: Manager, Tule Lake Relocation Center, Newell, California
Thomas C. Clark, Attorney General, Washington, D.C.

Signed: Lewis E. Carpenter, Fay Kincade, Elvena V. Peterson, Marty Kaufman, Fred Hartman, Annabel Dreuth, W. H. Schmidt David Hartman, Walter E. Atwood, Anne Hartz

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Footnote by Lillian Baker

The "considerable pressure" and physical violence to be feared by many Americans of Japanese descent at Tule Lake Segregation Center, came from "the pressure boys" pictured in LIFE MAGAZINE, March 20, 1944 issue, Vol. 16, No. 12. Captioned under photo by LIFE photographer, Carl Mydans: "These five Japs are among 155 trouble makers imprisoned in the stockade within the Tule Lake Segregation Center." Story headline: "TULE LAKE--AT THIS SEGREGATION CENTER ARE 18,000 JAPANESE CONSIDERED DISLOYAL TO U.S." 70% are American citizens; the adults either asked for repatriation, refused to take an oath of allegiance to U.S., or are suspected of being dangerous to the national security.

DOCUMENT #3

Re: S1009, April 10, 1987 DOCUMENTED CASES OF DISLOYALTY
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.

For inclusion with written STATEMENT by Lillian Baker

Excerpt, December 5, 1941 letter from:
Sino-Korean Peoples League, 101 D. Street, NE, Wash.,DC
Marked: VERY URGENT

Honorable Maxwell Hamilton
Chief, Far East Division
Department of State
Washington, D.C.

My dear Mr. Hamilton:

+ + + I know the owner of the Japanese daily, Mr. Yasataro Soga, personally. He is a front man for the Japanese Consulate. Nippu Jiji has played an important part in the Japanization of Hawaii + + +

+ + + Issuance of military conscription order by the Japanese Consulates in Honolulu, Los Angeles, San Francisco and Seattle, Oct. 2, 1941, conscription of ALL JAPANESE ALIENS AS WELL AS THE JAPANESE AMERICANS WHO HOLD ON TO THE JAPANESE CITIZENSHIP -- DUAL CITIZENSHIP.

+ + + Japanese activities in Hawaii and California, Oregon, Washington and New York show signs that Japan is ready to strike without warning as Matsuo boldly pointed out.

+ + +Hirota, former foreign minister, now the 'Big Stick' of the Black Dragon Society, in their August 26 meeting told the news that War Minister Tojo has ordered a total war preparation to meet the armed forces of the United States in the Pacific Emergency. Tojo is said to have told him of the Navy's full support of his policy against America...

In the interest of America's security and the cause of Korea's freedom, Respectfully (signed) KILSOO K. HAAN

May 9, 1941 Japanese Consulate in Los Angeles to Japanese Foreign Ministry in Tokyo (decoded MAGIC message): "We shall maintain connection with our second generation who are at present in the army (of the United States) ..." June 9, 1941: "...For the future we have made arrangements to collect intelligence from second generation Japanese draftees on matters dealing with troops."

["Second generation" = American citizens of Japanese descent]

DOCUMENT #4

Re: S1009, April 10, 1987 **DOCUMENTED CASES OF DISLOYALTY**
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.

For inclusion with written Statement by Lillian Baker.

Source: THE RAFU SHIMPO (Los Angeles Japanese Daily News, Friday, Oct. 7, 1977.

Letters To The Editor, Karl G. Yoneda (San Francisco)

Karl G. Yoneda is a proponent of monetary redress and reparations.

Editors:

After publicity appearing in your Aug. 25 issue, I purchased Nadine and Don Hata's "Japanese Americans and World War II" booklet and read it with great interest.

It seems the Hatas have done a job, a la Hosokawa's "Nisei ...", to present the Issei and Nisei as "lily-white" to the American public as good and loyal people and that in some cases they were "200 per cent Americans", also that "Buddhist churches in America established Sunday services reflected the Americanization...". They, however, cover-up or ignore some portions of Nikkei history in order not to overshadow the kind of image the authors wished to portray.

One of the glaring omissions is that there were a number of die-hard pro-Japan Issei and Nisei-Kibei, just as there were German Nazi followers in the U.S.

For instance, the 8000 member Oversea Ex-Servicemen's League in America raised $202,000 for Japan War Relief and sent 30,000 mail sacks filled with "comfort kits" to Japanese Army in China between 1937 and 1940. Moreover, Issei leaders of the League, Buddhist, Christian, language schools and other organizations urged Nisei Japanese language students (327 schools with 21,949 students in 1940) to collect tin foil and write "comfort letters" to Japanese soldiers in China. Some of these leaders even purchased war bonds of Japan, and some of the JACL leaders publicly spoke in favor of Japan's invasion of China...

[See The Sunday Oregonian, March 6, 1983, (AP) Auburn, Washington, article, "Buried jar of Japanese war bonds an unusual find of uncertain value" . Tommy Takenega, an American of Japanese descent was one example of buying Japanese war bonds and burying for safety.]

Naturalized citizens who were members of the German Bund in America were de-naturalized and deported. American citizens who were members of the German Bund (Nazi party), were arrested and imprisoned for simply being a member of this party--although they were not convicted of espionage or sabotage. Will the Congress not set a precedent against "civil rights violations" in payment to Nisei who were disloyal, by then opening the door for Americans of German descent who were denied their "civil rights" to belong to any political party of their choice? Are we now to apologize to those American members of the Nazi Party (outlawed during WWII), but now "recognized" along with the Communist Party as being lawful and the privilege of any American to be a member of same? Or at least the "lawful right" to be a member of such political parties?

DOCUMENT #5

Re: S1009, April 10, 1987 **DOCUMENTED CASES OF DISLOYALTY**
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.
For inclusion with written Statement by Lillian Baker.

Source: RAFU SHIMPO(Los Angeles Japanese Newspaper), Aug. 14, 1981, Letter to the Editor.

This letter, written by Karl Yoneda, proves many disloyalties by kibei (American-born citizens educated in Japan).

KARL YONEDA testified before CWRIC as a proponent for monetary redress and reparations, even though he was one of the voluneers who went to Manzanar to help build the WRA center.

"Editor:

+ + + RAFU SHIMPO JA Redress Survey results before the CWRIC (R.S. 7/22/81) is commendable. However, it is overshadowed by its inaccurate attacks on the wartime JACLers.

For instance, Shuji Matsui, Issei progressive at Santa Anita and Joe Blamey, editor of the Manzanar Free Press, were severely beaten (James Oda who tried to defend Blamey was hospitalized), and I, my three-year old son and several others in Manzanar who were on a death list, were not members of the JACL at that time.

Why the attacks or death list? Because we were either pro-democracy, anti-Japan's militarism and/or anti-fascist activists. (Emphasis added)

Who were the ruffians? Most were confused and frustrated young adults egged on by a handful of pro-Tojo militarists and do-or-die-for-emperor Black Dragon hoodlums.

I, too, advocated segregating those fascist and fanatic leaders who were mostly Kibei.* They inflicted injuries on many, including my wife, Elaine, who received a bloody forehead and leg bruises from rocks thrown at her while she worked at the camouflage net project.

Their threats--through Japanese leaflets containing messages that Japan will be victorious, a few cruising around in a trash truck bearing pirate and Japanese inscribed "Manzanar Black Dragon" flags and the physical encounters--constantly created fearful unrest among the 'relocated evacuees'.

Elaine and I reported their terroristic activities, which tried to undermine the allied war efforts against the fascist Axis (Germany, Italy, Japan) to the proper authorities. If that makes us 'informants' in the eyes of some misguided or indignant 'Johnny-come-lately-crusaders', they have lost sight or do not realize what WWII was all about.

What if Hitler's hordes and Imperial Japan rapists of Nanking had won the war, where would we be today? + + +"

*Segregation at Tule Lake Segregation Center did come about because of the urging of JACL leaders in Washington,DC, and the War Relocation Authority who had difficulty in controlling the thousands of troublemakers in the 10 WRA centers. Kibei are AMERICAN CITIZENS born in USA, but educated in Japan. The Commission on Wartime Relocation & Internment of Civilians reported "not a single case of disloyalty by American citizens". Totally false, as this report by one of the leaders of the coaltion for redress and reparations reports, namely KARL YONEDA. James Oda, a victim of pro-Japan terrorists, also joines Yoneda in condemning the evacuation, even though he voluntarily removed himself to a WRA center.

DOCUMENT #6

Re: S1009, April 10, 1987 DOCUMENTED CASES OF DISLOYALTY
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.
For inclusion with written Statement by Lillian Baker

Source: THE RAFU SHIMPO, Los Angeles Japanese Daily News, December 1, 1975 (three decades after Pearl Harbor), Miss Ellen Endo columnist for THE RAFU SHIMPO, printed the following words written by a Nisei (American citizen of Japanese descent):

> "If in a war (with Japan) and if I had the choice, I would go over on the other side to fight..."

Source: Oct. 26, 1975, letter in files of State Department of Parks and Recreation, Sacramento, Calif. 95814. Re: TULE LAKE

The text of the historical plaque at Tule Lake should "say something about the fact Tule Lake was a maximum security mass segregation prison for those inmates who protested and fought the unreasonable loyalty questionaire imposed by the War Relocation Authority. Tule Lake was the center of the Japanese American resistance movement, and its unique role in history must not be ignored." Letter from Raymond Okamura, leader in the coalition for redress and reparations.

The "unreasonable" loyalty questionaire was as follows: "Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any and all attack by foreign or domestic foes, and forswear any form of allegiance to the Japanese emperor, or any other foreign government, power or organization?"

Source: Nov. 1, 1976 RAFU SHIMPO, "Nisei in Japan: A Lost Generation"

Tokyo Rose and hundreds of other Japanese Americans with dual citizenship who were caught in Japan when WWII broke out, were considered Japanese because of dual citizenship and fought or served Japan's military effort against the United States.

Among them: American-born Kiyo Nogami, Bruce Kawashima, Day Inoshita, and Bob Yamada.Re: S1009, April 10, 1987

DOCUMENT #7

Re: S1009, April 10, 1987 DOCUMENTED CASES OF DISLOYALTY
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.
For inclusion with written Statement of Lillian Baker.

[Source: The Sunday Oregonian, March 6, 1983, (AP) Auburn, Washington, "Buried jar of Japanese war bonds an unusual find of uncertain value]

Tommy Takenega, an American of Japanese descent, buried Japanese war bonds just prior to evacuating the West Coast during WWII, as ordered by the U.S. wartime government.

Instead of showing loyalty to the United States by investing in U.S. war bonds, this American of Japanese descent showed loyalty to Japan by investing his saving in enemy bonds.

Some of his relatives in Auburn, Washington, owned a farm there and he buried two jars of bonds issued by the government of Imperial Japan.

The bonds would have been redeemable through the Yokohama Specie Bank of Japan which has since been absorbed by the Bank of Tokyo.

The above information, disclosed in this Portland, Oregon newspaper, reveals that prior to Pearl Harbor, thousands of Japanese aliens and Americans of Japanese descent contributed millions of dollars to help finance aggression against our allies and to finance the purchase of weapons used to kill Americans at Pearl Harbor and during World War II.

Many of the abovementioned Americans of Japanese descent are now seeking monetary reparations and a U.S. government apology.

Although Takenega may not now be living -- he was 80 years old when the 1983 report was made -- his so-called "survivors" would be entitled under proposed legislation before the Congress.

DOCUMENT #6
(consisting of 2pgs)

Re: S1009, April 10, 1987 DOCUMENTED CASES OF DISLOYALTY
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.
For inclusion with the written Statement of Lillian Baker.

[Source: United States Supreme Court Archives, Washington, D.C., declassified.]

Repatriation Application Papers filed with the Wartime Civil Control Administration (Forms R-100 and R-101) and the War Relocation Authority, (W.R.A. 230).

AMERICAN-BORN JAPANESE APPLYING FOR EXPATRIATION TO JAPAN, by Age, Sex, Citizenship, Residence and Education in Japan: July, 1944.

This graph shows the total applying for expatriation: 11,447
Of this total, 4,738 American-born Japanese held dual citizenship.
Of this total, 4,517 had residence in Japan, primarily in the most informative years (10-11, and 16-19 years of age).

When the United States Supreme Court handed down its 6-3 opinion affirming the right of the United States to exclude persons of Japanese descent from the endangered West Coast, (Korematsu v. U.S., Oct. 1944 Term), Mr. Justice Hugo Black clearly stated that there were disloyalties. He and the other justices had before them the graph showing the break-down of American-born Japanese, citizens of the United States, who had asked to be immediately expatriated to Japan (Wartime Civil Control Administration forms), and subsequent requests for expatriation following the exclusion order, (E.O.9066, Feb. 19, 1942).

(CHART 4, is this abovementioned graph, which is part of the U.S. Supreme Court file in the case of Korematsu v. United States. The Chart 4 was made available to the Commission on Wartime Relocation and Internment of Civilians, but this appears nowhere in the records of the CWRIC, in former published testimony by Lillian Baker, nor is it included in the archival material of the CWRIC records of hearings and/or testimony.)

Many of the renunciants returned from Japan after 1948, and are among the "survivors" who would like an apology by the United States government.

Attachment: CHART 4

[From the United States Supreme Court Archives, Washington DC -- newly declassified]

UNITED STATES SUPREME COURT, October 1944 Term - [Korematsu v. U.S.] ..."there were disloyalties..."

Repatriation Application Papers filed with the Wartime Civil Control Administration(Forms R-100 and R-101) and the War Relocation Authority. (W.R.A. 230).

American-born Japanese Applying for Expatriation to Japan, by Age, Sex, Citizenship, Residence and Education in Japan: July, 1944

Age and Sex	Total applying for expatriation	Citizenship Claimed		Residence in Japan by Number of Years								Education in Japan by Number of Years				
		Dual	U.S.	No Japanese residence	Less than one year	1-2 years	3-4 years	5-9 years	10-14 years	15-19 years	20 years and over	No Japanese education	Less than one year	1-2 years	3-4 years	5-9 years
Both Sexes																
All ages ..	11,447	4,738	6,709	6,930	300	764	210	811	1,437	899	96	8,074	8	150	205	1,918
0-4 years	1,590	147	1,443	1,577	8	5	—	—	—	—	—	1,590	—	—	—	—
5-9 years	1,240	197	1,043	1,152	38	50	—	—	—	—	—	1,240	—	—	—	—
10-14 years ...	1,386	199	1,187	1,197	62	110	11	5	1	—	—	1,369	—	7	6	4
15-19 years ...	2,092	665	1,427	1,519	91	226	40	105	91	20	—	1,847	2	37	26	147
15-17 years .	1,135	244	891	914	45	120	10	31	13	2	—	984	1	18	7	30
18-19 years .	957	421	536	605	46	106	30	74	78	18	—	771	1	19	21	117
20-24 years ...	2,603	1,721	882	973	58	220	91	301	597	358	5	1,268	2	69	85	727
25-29 years ...	1,621	1,182	439	340	24	102	34	240	482	362	37	489	3	21	48	644
30-34 years ...	620	429	191	110	8	28	15	108	205	121	25	156	—	9	26	272
35 and over...	295	198	97	62	11	23	19	52	61	38	29	116	1	7	13	124
Males																
All ages ..	6,519	3,042	3,477	3,573	171	413	113	520	1,044	630	56	4,192	7	79	127	1,362
0-4 years	782	75	707	776	4	2	—	—	—	—	—	782	—	—	—	—
5-9 years	637	102	535	587	26	24	—	—	—	—	—	637	—	—	—	—
10-14 years ...	754	119	635	654	38	53	5	3	1	—	—	743	—	4	3	3
15-19 years ...	1,151	426	725	801	45	128	20	74	64	19	—	981	1	18	18	108
15-17 years .	598	143	455	474	20	65	4	23	10	2	—	467	—	6	6	24
18-19 years .	553	283	270	327	25	63	16	51	54	17	—	422	1	12	12	84
20-24 years ...	1,609	1,137	472	509	33	128	46	179	454	258	2	670	2	39	42	545
25-29 years ...	961	735	226	168	12	50	21	152	320	235	13	231	3	12	31	410
30-34 years ...	405	293	112	56	3	14	10	72	152	84	14	77	—	4	22	192
35 and over...	220	155	65	32	10	14	11	40	53	34	26	71	1	2	11	104
Females																
All ages ..	4,928	1,696	3,232	3,357	129	351	97	291	395	269	41	3,882	1	71	78	556
0-4 years	808	72	736	801	4	3	—	—	—	—	—	808	—	—	—	—
5-9 years	603	95	508	565	12	26	—	—	—	—	—	603	—	—	—	—
10-14 years ...	632	80	552	543	24	57	6	2	—	—	—	626	—	3	2	1
15-19 years ...	941	239	702	718	46	98	20	31	27	1	—	866	1	19	10	39
15-17 years .	537	101	436	440	25	55	6	8	3	—	—	517	1	12	1	6
18-19 years .	404	138	266	278	21	43	14	23	24	1	—	349	—	7	9	33
20-24 years ...	994	584	410	464	25	92	45	122	143	100	3	598	—	30	43	182
25-29 years ...	660	447	213	182	12	62	13	88	162	127	24	258	—	9	17	234
30-34 years ...	215	136	79	54	5	14	5	36	53	37	11	76	—	5	4	80
35 and over...	75	43	32	30	1	9	8	12	8	4	3	45	—	5	2	20

Repatriation Application Papers filed with the Wartime Civil Control Administration (Forms R-100 and R-101) and the War Relocation Authority. (W.R.A. 230)

Lillian Baker document

DOCUMENT #9

Re: S1009, April 10, 1987 **DOCUMENTED CASES OF DISLOYALTY**
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of
the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.
For incusion with written Statement by Lillian Baker

[Source: "Betrayal from the East" by Alan Hynd, respected journalist, graduate of Columbia University. Published, Robert M. McBride & Co., NY, 1943. Hynd died Jan.10,1974, NY TIMES obituary, Jan.12,1974]

The following question was asked of evauees in the WRA centers:

> "Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any or all attack by foreign or domestic foes, and forswear any form of allegiance to the Japanese emperor, or any other foreign government, power or organization?"

Relocation Center	Number Registered	Number Answering "no" to loyalty question	Number Volunteers
Central Utah.........	2,420	806	116
Colorado River.......	3,356	671	238
Gila River...........	2,488	547	119
Granada..............	1,117	117	121
Heart Mountain.......	1,881	451	47
Jerome	1,341	110	33
Manzanar.............	1,826	913	101
Minidoka.............	1,607	32	310
Rohwer...............	1,585	300	37
Tule Lake............	2,342	836	59
TOTAL................	19,963	4,783	1,181
Average (per cent)...		24%	6%

What this graph shows is that about one out of four Nisei in the relocation centers admitted their disloyalty to the United States, and only six out of every one hundred of them volunteered for service in the United States Army.

There were three different kinds of leaves from the WRA centers:

1) indefinite leave for those taking a loyalty oath and who agree they must remain outside of military areas.
2) Leave granted for seasonal work (farming), with pay.
3) Short-term leave up to 30 days, often to conduct business in parts of the United States outside of military area.

As of July 6, 1943, there were almost 10,000 out of relocation centers on indefinite leave; 5,000 on seasonal leave. At that time (1943) approximately 1,000 were being released each week.

DOCUMENT #10
(consisting of 3 pages)

Re: S1009, April 10, 1987 **DOCUMENTED CASES OF DISLOYALTY**
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David. H. Pryor, Chair.
For inclusion with written Statement of Lillian Baker.

[Source: Confidential (declassified) Department of Justice. For the Attorney General.(signed) John L. Burling. January 9, 1945.]

Masao Sakmoto, Chairman, Sokuji Kikoku Hoshi Dan Jan.9,1945
and Tsutomu Higashi, Chairman, Hokuku Seimen Dan
Tule Lake Center, Newell, California

Sirs:

Your letter of January 1, 1945, and your telegram of January 6, 1945, to the Attorney General pertaining to the apprehension as enemy aliens of 70 members of your organizations on December 27, 1944, has been referred to me for reply.

+ + + The young men of the Hokoku Seinen Dan leadership glibly assert their loyalty to the Emperor of Japan and their desire to fight in the Japanese army. They have the effrontery to engage on American soil in semi-military drilling and in Japanese patriotic exercises to the sound of bugles...

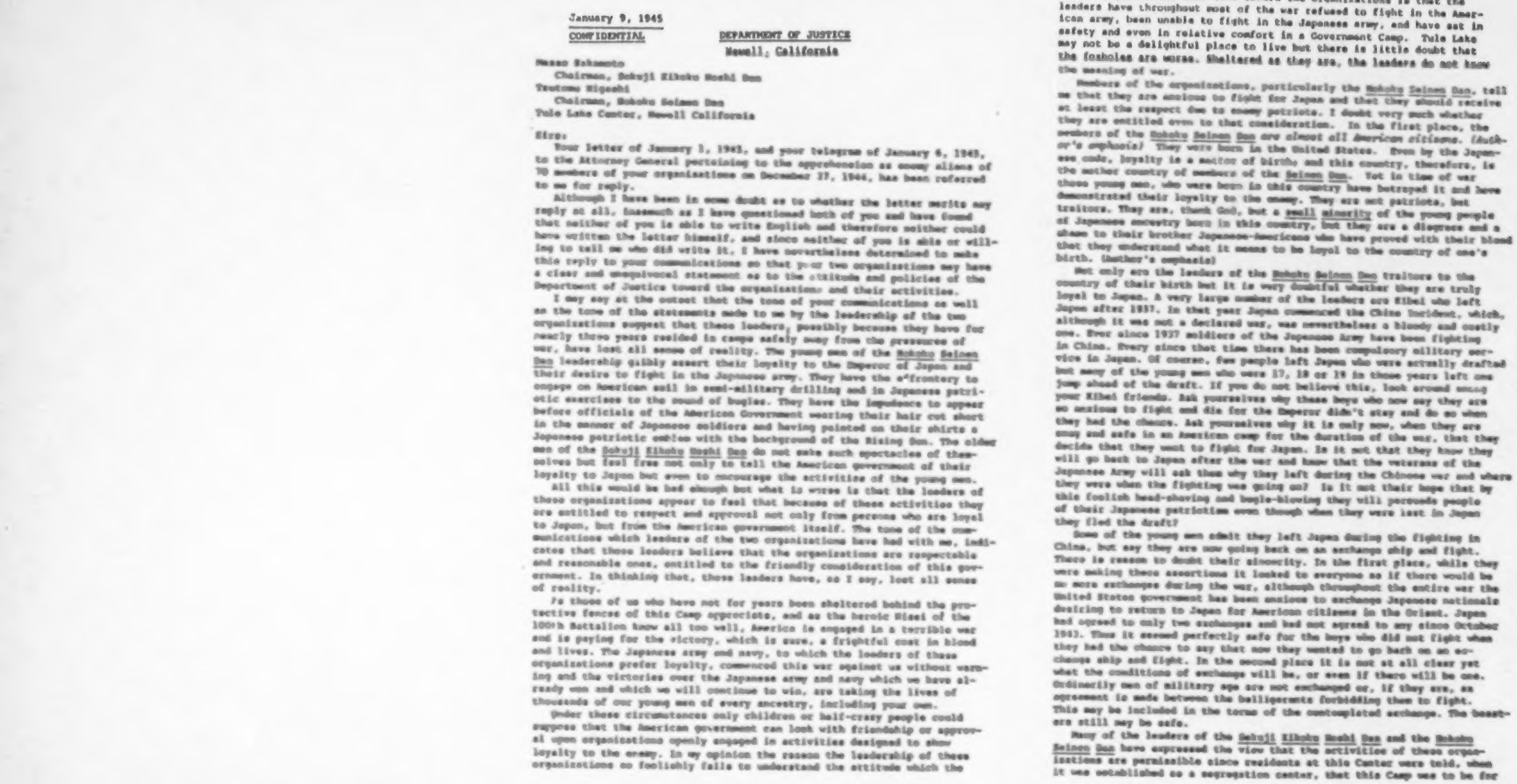
+ + + In my opinion the reason the leadership of these organizations so foolishly fails to understand the attitude which the American government must take toward the organizations is that the leaders have throughout most of the war refused to fight in the American army, been unable to fight in the Japanese army, and have sat in safety and even in relative comfort in a Government Camp. Tule Lake may not be a delightful place to live but there is little doubt the foxholes are worse. Sheltered as they are, the leaders do not know the meaning of war. [Emphasis added]

+ + + Members of the organizations, particularly the Hokoku Seinen Dan, tell me that they are anxious to fight for Japan... the members of the Hokoku Seinen Dan are almost all American citizens. They were born in the United States. + + + Yet in time of war those young men, who were born in this country have betrayed it and have demonstrated their loyalty to the enemy. They are not patriots, but traitors. [Emphasis added]

+ + + All these men were alien enemies, either because they were Issei to begin with, or because they were dual citizens who renounced their American citizenship, thus leaving only Japanese citizenship. [Emphasis added]

[Full text of John L. Burling letter, Jan. 9, 1945, is attached]

NO DISLOYALTIES BY JAPANESE-AMERICANS?



January 9, 1945

CONFIDENTIAL

DEPARTMENT OF JUSTICE
Newell, California

Masao Sakamoto
Chairman, Sokuji Kikoku Hoshi Dan
Tsutomu Higashi
Chairman, Hokoku Seinen Dan
Tule Lake Center, Newell California

Sirs:

Your letter of January 1, 1945, and your telegram of January 6, 1945, to the Attorney General pertaining to the apprehension as enemy aliens of 70 members of your organizations on December 27, 1944, has been referred to me for reply.

Although I have been in some doubt as to whether the letter merits any reply at all, inasmuch as I have questioned both of you and have found that neither of you is able to write English and therefore neither could have written the letter himself, and since neither of you is able or willing to tell me who did write it, I have nevertheless determined to make this reply to your communications so that your two organizations may have a clear and unequivocal statement as to the attitude and policies of the Department of Justice toward the organizations and their activities.

I may say at the outset that the tone of your communications as well as the tone of the statements made to me by the leadership of the two organizations suggest that these leaders, possibly because they have for nearly three years resided in camps safely away from the pressures of war, have lost all sense of reality. The young men of the Hokoku Seinen Dan leadership glibly assert their loyalty to the Emperor of Japan and their desire to fight in the Japanese army. They have the effrontery to engage on American soil in semi-military drilling and in Japanese patriotic exercises to the sound of bugles. They have the impudence to appear before officials of the American Government wearing their hair cut short in the manner of Japanese soldiers and having painted on their shirts a Japanese patriotic emblem with the background of the Rising Sun. The older men of the Sokuji Kikoku Hoshi Dan do not make such spectacles of themselves but feel free not only to tell the American government of their loyalty to Japan but even to encourage the activities of the young men.

All this would be bad enough but what is worse is that the leaders of these organizations appear to feel that because of these activities they are entitled to respect and approval not only from persons who are loyal to Japan, but from the American government itself. The tone of the communications which leaders of the two organizations have had with me, indicates that these leaders believe that the organizations are respectable and reasonable ones, entitled to the friendly consideration of this government. In thinking that, these leaders have, as I say, lost all sense of reality.

As those of us who have not for years been sheltered behind the protective fences of this Camp appreciate, and as the heroic Nisei of the 100th Battalion know all too well, America is engaged in a terrible war and is paying for the victory, which is sure, a frightful cost in blood and lives. The Japanese army and navy, to which the leaders of these organizations prefer loyalty, commenced this war against us without warning and the victories over the Japanese army and navy which we have already won and which we will continue to win, are taking the lives of thousands of our young men of every ancestry, including your own.

Under these circumstances only children or half-crazy people could suppose that the American government can look with friendship or approval upon organizations openly engaged in activities designed to show loyalty to the enemy. In my opinion the reason the leadership of these organizations so foolishly fails to understand the attitude which the American government must take toward the organizations is that the leaders have throughout most of the war refused to fight in the American army, been unable to fight in the Japanese army, and have sat in safety and even in relative comfort in a Government Camp. Tule Lake may not be a delightful place to live but there is little doubt that the foxholes are worse. Sheltered as they are, the leaders do not know the meaning of war.

Members of the organizations, particularly the Hokoku Seinen Dan, tell me that they are anxious to fight for Japan and that they should receive at least the respect due to enemy patriots. I doubt very much whether they are entitled even to that consideration. In the first place, the members of the Hokoku Seinen Dan *are almost all American citizens. (Author's emphasis)* They were born in the United States. Even by the Japanese code, loyalty is a matter of birth, and this country, therefore, is the mother country of members of the Seinen Dan. Yet in time of war these young men, who were born in this country have betrayed it and have demonstrated their loyalty to the enemy. They are not patriots, but traitors. They are, thank God, but a small minority of the young people of Japanese ancestry born in this country, but they are a disgrace and a shame to their brother Japanese-Americans who have proved with their blood that they understand what it means to be loyal to the country of one's birth. (Author's emphasis)

Not only are the leaders of the Hokoku Seinen Dan traitors to the country of their birth but it is very doubtful whether they are truly loyal to Japan. A very large number of the leaders are Kibei who left Japan after 1937. In that year Japan commenced the China Incident, which, although it was not a declared war, was nevertheless a bloody and costly one. Ever since 1937 soldiers of the Japanese Army have been fighting in China. Every since that time there has been compulsory military service in Japan. Of course, few people left Japan who were actually drafted but many of the young men who were 17, 18 or 19 in those years left one jump ahead of the draft. If you do not believe this, look around among your Kibei friends. Ask yourselves why these boys who now say they are so anxious to fight and die for the Emperor didn't stay and do so when they had the chance. Ask yourselves why it is only now, when they are snug and safe in an American camp for the duration of the war, that they decide that they want to fight for Japan. Is it not that they know they will go back to Japan after the war and know that the veterans of the Japanese Army will ask them why they left during the Chinese war and where they were when the fighting was going on? Is it not their hope that by this foolish head-shaving and bugle-blowing they will persuade people of their Japanese patriotism even though when they were last in Japan they fled the draft?

Some of the young men admit they left Japan during the fighting in China, but say they are now going back on an exchange ship and fight. There is reason to doubt their sincerity. In the first place, while they were making these assertions it looked to everyone as if there would be no more exchanges during the war, although throughout the entire war the United States government has been anxious to exchange Japanese nationals desiring to return to Japan for American citizens in the Orient. Japan had agreed to only two exchanges and had not agreed to any since October 1943. Thus it seemed perfectly safe for the boys who did not fight when they had the chance to say that now they wanted to go back on an exchange ship and fight. In the second place it is not at all clear yet what the conditions of exchange will be, or even if there will be one. Ordinarily men of military age are not exchanged or, if they are, an agreement is made between the belligerents forbidding them to fight. This may be included in the terms of the contemplated exchange. The boasters still may be safe.

Many of the leaders of the Sokuji Kikoku Hoshi Dan and the Hokoku Seinen Dan have expressed the view that the activities of these organizations are permissible since residents at this Center were told, when it was established as a segregation center, that this Camp was to be for persons who look toward a future in Japan and, in a sense, was to be for persons who were loyal to Japan. This is wholly wrong. It is true that this Camp was set aside as a segregation center and that by and large persons who were denied leave clearance were transferred here. It is also true that many persons who were segregated here had already declined to express their loyalty to the United States. Many people, however, came here to be with their families or for other reasons unrelated to loyalty to Japan. Thus, it is incorrect to say that this is a camp exclusively for Japanese patriots and that pro-Japanese activity is therefore permissible. No Government can force inner loyalty. Those Issei who feel loyal to Japan may live quietly in the Camp and continue to feel that loyalty. Those Nisei who feel loyal to Japan may, under the new statute, apply for renunciation of their citizenship; and, if it is approved, they, like their elders, may live in a Camp quietly and continue to feel that loyalty. No one, however, has the right to engage in pro-Japanese demonstrations and parades or to publish pro-Japanese newspapers or to wear a semi-military uniform bearing the emblem of the Rising Sun on it. What is even more important, no one loyal to Japan has the right here to seek to convert others to that loyalty. I am well aware that your two organizations have put pressure on residents of this Center to assert loyalty to Japan and that in a number of cases, physical violence was employed. There is no more right to engage in Japanese patriotic ceremonies or to publish a pro-Japanese paper in this Center, where some loyal Americans still live, than there is anywhere else in the United States. It is as treasonable to coerce others into asserting loyalty to Japan here as it would be outside. All these activities will stop.

Coming to the specific questions which you asked the Attorney General in your letter of January 1, 1945, you are informed that the 70 men apprehended by the Department of Justice on December 27, 1944, were apprehended as alien enemies pursuant to Section 21 Title 50 United States Code, which authorizes the apprehension of alien enemies who are deemed dangerous to the internal security of the United States. All these men were alien enemies, either because they were Issei to begin with, or because they were dual citizens *[author's emphasis]* who renounced their American citizenship, thus leaving only Japanese citizenship. Their internment as alien enemies was deemed in the national interest by the Attorney General because of the subversive activities of the organizations of which they were leaders.

You next state that these men were originally segregated in Tule Lake with their families because of their professed loyalty to Japan and ask why they are now interned and separated from their families. They have not been interned because of their feelings of loyalty to Japan but because it was felt necessary to remove them to the Department of Justice Internment Camp where their conduct may be more carefully controlled. At some later date it may or may not be possible to arrange for their internment in a camp where their families may join them. At the present time there are not sufficient family camp facilities to permit this. The Geneva Convention does not guarantee an enemy, whether prisoner of war or civilian internee, the right to have his family with him. Internment in family camps is an additional humanitarian procedure provided by this government which can be provided only as there is space available.

Your third question asks why the men who were apprehended on December 27th, 1944 were not given time to bid farewell to their families or to pack their belongings. Since the men were apprehended in the middle of the night when they were presumably in their apartments with their families, I should suppose that they did in fact have an opportunity to say goodbye. I also understand that they were able to take with them their necessary belongings.

You last state that one of the 70 men was arrested when his mother was ill and you assert that his removal was, therefore, inhumane. It is, of course, unfortunate that this man's mother was ill at the time but there is nothing inhumane about the son's apprehension. Persons who engage in subversive activities may be expected to be apprehended and if this apprehension comes at an unfortunate time, that is his own responsibility. In view of the fact that 70 men had to be moved by special train, it was necessary to conduct the operation with speed and efficiency and, although I am unaware of the details of the movement, I assume that there was a practical reason which made it impossible for the apprehended man to visit his mother. The Department of Justice desires to be humane but when dealing with avowed enemies of this country, the interests of the United States will, within the safeguards of the Geneva Convention, come first.

In your letter of January 1, 1945, you refer to the apprehension of the 70 men as an "intolerable incident". There is nothing whatsoever "intolerable" about that incident. What is intolerable is that the activities of your two organizations continue. Since these activities are intolerable, they will not be tolerated but, on the contrary, will cease.

Signed:
FOR THE ATTORNEY GENERAL
John L. Burling

CONFIDENTIAL [DECLASSIFIED]
DEPARTMENT OF JUSTICE

DOCUMENT #11

Re: S1009, April 10, 1987 Documented Cases of Disloyalty
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of
the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.
For inclusion with written Statement of Lillian Baker.

[Source: RAFU SHIMPO, 259 S. Los Angeles St., CA 90012, English Section, Sept. 1, 1983]

About 600 Nisei volunteers from the relocation centers, were transferred to Ft. McCleilan in March 1944 for combat training. Many of them were prewar draftees who had been assigned to non-combat duties such as clerks, cooks, or drivers after Pearl Harbor, and the assignments were at inland Army posts.

On March 20, 1944, the infantry trainees were ordered to march to a field house on the post to hear an orientation by the training center commander. A group of about 43 refused, and during the next few days, 106 Nisei were arrested for failing to obey orders. Of the 28 who refused to train and were up for court-martial, Brig. Gen. Wallace C. Philon, commander at Ft. McClellan, told an Associated Press reporter that the 28 had "lived for several years in Japan and have become indoctrinated with the military philosophy of that country."

Eventually, 21 were tried and convicted for violating Article of War 64 -- willfully disobeying the lawful command of a commissioned officer. They were sentenced to dishonorable discharge, total forfeiture of pay and confinement at hard labor from five to 30 years. In Nov. 1945, the sentences were reduced to three years by a special clemency action. In 1946, they were put on parole and released.

According to the Aug. 29, 1983 edition of the ARMY TIMES, 11 Nisei who were court-martialed in 1944, had their years of confinement and dishonorable discharges wiped off the record books and thereby received credit toward active service; the records were changed to show the Nisei had been honorably discharged due to expiration of their enlistment rather than their release from confinement. Two of the five member board reviewing the case, said they felt the 11 soldiers had refused training to avoid combat duty in Italy with the 442nd Infantry, which was sustaining heavy casualties at the time. They also argued that the 11 had known of the conditions in the WRA centers for more than two years but had not protested until their assignment to combat training.

The ARMY TIMES reported that the public files show that the 11 protestors are prominent in business today...but names are deleted from the record files in this recent case.

DOCUMENT #12, Lillian Baker   Hearing: June 17, 1987, S.1009

(consisting of 6 pages)

Documentation for inclusion with written testimony, June 17, 1987 - Hearing, S.1009, Subcommittee of the Judiciary, U.S. Senate, Hon. David Pryor, Chairman, Committee on Governmental Affairs.

A TRUE COPY authorizing LILLIAN BAKER to give testimony in absentia on behalf of now deceased DILLON S. MYER, former Director of the War Relocation Authority, WWII. Mr. Myer's Aug. 4, 1981 testimony was not included in the CWRIC report titled, PERSONAL JUSTICE DENIED, or is any reference made to it. Because of this grave omission of vital testimony, it is re-submitted for publication in the record of the Hearings on S.1009, for information of members of the Judiciary and Congress.

TELEGRAM OF AUTHORIZATION FOR LILLIAN BAKER TO GIVE TESTIMONY IN ABSENTIA ON BEHALF OF DILLON S. MYER:

07003 (4-055971S212 1602 2029662178) 08-01 PMS)
TDMT WASHINGTON DC 37 07-31 040IP EST (VIA DY LOSA LN) ICS IMPLDLA LSA
LILLIAN BAKER, 15237 Chanera Ave., Gardena, CA 90249 - IWA028(1049)
(1-004325M213) PD 08/01/81 1049.

MESSAGE: I, DILLON S MYER, FORMER DIRECTOR OF THE WAR RELOCATION AUTHORITY, AUTHORIZE LILLIAN BAKER AS MY SPOKESWOMAN IN LOS ANGELES TO GIVE TESTIMONY BEFORE THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT SECTION IIB,C: IMPLEMENTATION OF EO9066.
(signed)DILLON S. MYER (address) WASHINGTON, D.C.

TESTIMONY OF DILLON S. MYER

My name is Dillon S. Myer, and I was appointed by President Franklin Delano Roosevelt, June 1942, to head the War Relocation Authority, which had been established under Executive Order 9102, March 18th, 1942.

Executive Order 9102 was a completely separate and distinct order under the Presidential wartime powers, and was a civilian agency. Unlike Executive Order 9066, February 19th, 1942, which gave the Western Command extraordinary powers to wage war successfully by specifying that "any and all persons" may be removed from military designated areas, Executive Order 9102 established an agency of the government responsible for establishing centers into which persons of Japanese ancestry could reside or relocate away from the red zones of the military designated areas on the west coast.

The first director of the War Relocation Authority, Milton Eisenhower, consulted with me regarding the name for the centers, and it was agreed that the best name was "relocation centers", in view of their function.

The function of the War Relocation Authority was one of arranging relocation into normal communities for all evacuees in our centers. These communities were located throughout the United States away from the sensitive west coast.

To carry out the business of the War Relocation Authority, we established regional relocation offices for the purpose of finding employment for the evacuees, to help educate the public as to their status, and to urge evacuees to move out of the centers.

We took very seriously our responsibility to get as many evacuees out of the centers into other communities, and several thousand did. There were still several thousand in the relocation centers at the end of World War II. Many of these were Issei, who were fearful of public reactions because they were Japanese nationals.

We in the War Relocation Authority tried to do the most constructive job possible in the placement of evacuees into communities and to provide temporary living conditions for those who chose to remain at the centers.

Because of my nearly three decades of progressive activity in the agricultural field, I was considered ably qualified for the arduous and trying times in administering the relocation centers which in many instances would have had to be self-productive with regard to feeding such vast populations which were so dependent on our government for even the most basic needs.

These needs were furnished by way of medical/dental care, housing, food, clothing, recreational diversion, and foremost the proper educational facilities for the thousands of young Americans of Japanese ancestry who naturally were brought with the adults, who made the final decision to either relocate to the interior, or use the relocation centers as wayside shelters for several months, or who chose to remain for the duration.

One fourth of all American-born of Japanese ancenstry in the War Relocation Centers were only 15 years of age, and many more were much younger. In keeping with the Japanese tradition, the War Relocation Authority worked very hard to keep families together. In many instances, Americans of Japanese ancestry left families to continue their education in colleges and universities, and many other patriotic Americans participated in the war effort by fighting for their country.

Those who did this left older brothers and grandparents or younger brothers and sisters at the relocation centers, fully confident that I and my staff would see to their needs.

I have been greatly concerned about the misuse of terms and misstatements by some regarding the real objectives of the War Relocation

Authority and the relocation centers. There has been a practice in some areas to refer to the relocation centers as "concentration camps", even though the United States Supreme Court spelled out the difference between concentration camps and relocation centers in the October 1944 term, landmark decision, Fred Korematsu v. United States, in which our highest tribunal stated, "we deem it unjustifiable to call them concentration camps with all the ugly connotations that term implies."

As early as August 29th, 1973, I heard about the use of this offensive terminology and thought it was popular just among some of the younger Japanese Americans to use this terminology, probably due in part to the fact that two different books have been published with the same title, CONCENTRATION CAMPS, USA.

I found it useless to protest at the time and believed that any public protest from me would only set the argument more deeply. I felt the people who were using the term loved controversy, and anything I said in public would only add to the fire of controversy.

As you might expect, I did not and do not like the idea of the term "concentration camps" instead of relocation centers for the reasons set forth in my book, UPROOTED AMERICANS. I especially do not like the adopted term, because I do not want to go down in history as a director of "concentration camps". It's offensive to me and to those dedicated members of my staff.

When the War Relocation Authority was preparing to close the final chapter in this most misunderstood period of American history, the Japanese American Citizens League, representing their members and the vast majority of all persons of Japanese ancestry in the United States, held a testimonial banquet May 22nd, 1946, at the Roosevelt Hotel in New York City.

At this testimonial banquet, I was presented with a citation and many testimonials which, I was told, represented the affection and esteem in which I and members of my staff were held by the evacuees whose lives and ours were so intermingled, dependent one upon another during this great wartime tragedy.

But as the Supreme Court stated, and I must confirm that war brings tragedy to all, that "citizenship carries its responsibilities as well as its privileges, and in time of war the burden is always heavier."

More than 20 years later, another tribute was given me by these same evacuees lauding the WRA, the War Relocation Authority as "a living tribute to the correctness and vision of war relocation policies and practices".

Leading these tributes was Washington representative of the Japanese American Citizens League, Mr. Mike M. Masaoka, who today has joined with those who have demeaned me and my staff of dedicated individuals, most of whom are no longer here to defend themselves and their honorable wartime actions.

When I learned the names of those who are now using the term "concentration camp" and are asking for redress and reparations, I was moved to tears and could not help recalling that it was these very men who had kissed my hand in gratitude.

Mr. Masaoka wrote a complimentary Foreword to my book UPROOTED AMERICANS, and in it he stated that he was one who "has probably lived closer to the experience of those of Japanese ancestry in the United States from just before December 7th, 1941, than almost anyone else, first as the National Secretary of the Japanese American Citizens League on the west coast prior to and during the evacuation", and that he had personal knowledge of what Dillon S. Myer "has meant and means to those of Japanese ancestry in the United States".

Why has this man and those who paid tribute now forsaken me and my country? Why do they dishonor both?

Some who were not even born or were too young to remember, have told stories such as "a child being shot by a sentry". My memory is not so good anymore, but this is not the kind of incident that I would forget. Another criticism aimed at me is my advancing age and state of health. Then why can Mike Masaoka's testimony be accepted with more credence than mine? He is also 40 years older!

There have been stories advanced about people being shot trying to escape the relocation centers or segregation center of Tule Lake. I know of no such instance where people were shot while trying to escape. If anyone was shot, I would have known about it. I have no memory nor is there such a record of anyone being shot while trying to escape. Shootings due to riots and uprisings, yes. But the trouble was not between the United States military forces, but rather between the pro-Japan and pro-American forces within the centers themselves.

Because Manzanar relocation center and Tule Lake segregation center were located in California, which was a military designated zone, evacuees could not come and go as freely because they were in the evacuated areas. But many by the thousands were relocated as the War Relocation Authority was successful in finding jobs and did its very best to get people to leave the centers once jobs were available. And of course, many thousands did leave and became a part of the overall war effort.

The War Relocation Authority was established only after evacuees who moved out on their own ran into trouble from the local population in certain areas where wartime hysteria and the climate of war made it difficult to distinguish between Japanese and Americans of Japanese ancestry.

Many of the older aliens refused to leave the centers because they felt more secure and remained in peace with their families.

It is inaccurate to refer to persons who have been evacuated from the west coast as "Japanese". The Japanese are people who live in Japan. Although there were many alien adults among the evacuees, not in all cases were these "Japanese". Even in the case of aliens, they had come to the United States because they wanted to live here and earn a living, and two-thirds of their children were born here and were thus United States citizens.

Likewise the term "camp", when used to refer to a relocation center, is likewise objectionable. It leads people to confuse the relocation centers administered by the War Relocation Authority with the detention camps and internment camps administered by other agencies.

The evacuees were not "internees". They had not been "interned". Internees are people who were individually suspected of being dangerous to the internal security of the United States, who had been given a hearing on charges to that effect, and were then ordered confined in an internment camp administered by the army.

It is true there were armed guards at each center. These guards, in addition to other problems, helped protect the people in the centers from misguided attacks from local citizens. These guards were the minimum of external security, and in the event of riots, were not sufficient to quell the uprising, so that military aid had to be called in during the trouble with pro-Japan forces within the centers.

I received a copy of a letter from Dr. Harold S. Jacoby, who was my internal security officer at Tule Lake relocation center before it was turned over to the military as a segregation center for the disloyals.

Dr. Jacoby wrote that "most of the talk about 'armed guards', 'barbed wire fences' and 'machine guns' come from persons who were not in the camps or who were too young to know much about them. This is the part of the rhetoric that has grown up in recent years, and bears very little relationship to facts. Yes, there were camp perimeters, and these were perfunctorily controlled by MP's in Jeeps. And they carried side arms. But the perimeters were quite a distance away from the main camp areas, which made them 'out of sight and out of mind' most of the time".

The War Relocation Centers were not only self-governing, but the evacuees were their own police force within the block areas. As Dr. Jacoby stated in his recent letter, February 1981, this redress and reparations "isn't a Japanese American issue, it's a JACL issue, motivated by a desire to be militant".

I am not very happy with my efforts with writing the introductory remarks for Lillian Baker's book, THE CONCENTRATION CAMP CONSPIRACY: A Second Pearl Harbor, but I hope her book with be published and widely purchased.

It is with my whole-hearted consent and appreciation that I have allowed her to read my testimony before this Commission and ask that this testimony be made part of the record of this Commission and part of the historical accuracy of this widely propagandized and misunderstood action of World War II, the evacuation and relocation of persons of Japanese ancestry on the west coast of the United States.

Dillon S. Myer, former Director, War Relocation Authority, WWII
Washington, D.C.
July 12, 1981

Mrs. Lillian Baker
15237 Chanera Avenue
Gardena, California 90249

July 11, 1987

Hon. David Pryor, Senator and Chairman
United States Senate
Committee on Governmental Affairs
SD-340
Washington, DC 20510

Attn: Ed Gleiman, Staff Director

RE: S.1009, April 10, 1987 -- HEARING:
June 17, 1987

Dear Senator:

Enclosed are the final documents to be included with my written Statement for the published record of the Hearing, S.1009, June 17, 1987. These consist of Documents #13, #14, #15, and #16. The full U.S.Senate Judiciary should have them available.

With all due respect, I ask that you consider a few questions concerning S.1009, and its amendments:

1) Both House and Senate legislation to accept and implement the findings and recommendations of the Commission on Wartime Relocation and Internment of Civilians, (CWRIC), is written in such language that passage would pay monetary reparations and make an apology to a)over 1,800 persons of Japanese descent evacuated from Hawaii under a SECRET order issued by President Franklin Delano Roosevelt. [Source: July 15, 1942 SECRET revised Presidential Authorization of Hawaii Evacuation to Mainland, E.J. King, Commander in Chief, U.S. Fleet/G. C. Marshall, Chief of Staff. Copy printed, P.315, L. Baker's "The Concentration Camp Conspiracy: A Second Pearl Harbor"]. This authorization included "United States citizens or aliens, who were considered by appropriate authorities in the Islands to constitute a source of danger". Because American citizens could not be interned on the Island's internment camps for enemy aliens, arrangements were made with the War Relocation Authority for "the re-settlement of up to fifteen thousand persons". This SECRET document, now declassified, dismisses the claim and "findings" of the CWRIC that "nothing was done in Hawaii". If blanket Congressional reparations are made, the American taxpayer would be made to reward former disloyal Americans and enemy aliens; b)passage of the House and Senate bills, would make retroactive "citizens" of former Japanese nationals; c)payment would be made to those excluded from the West Coast who were known to be a threat to public safety and national security. Should reparations be paid to them?

2) One of the amendments states in error that some persons were "relocated" to "other countries". This is false and misleading. Persons of Japanese descent who went to "other countries", are those who asked for expatriation (in the case of dual-citizen Japanese), or repatriation of resident Japanese nationals. These persons "relocated to other countries", include Americans of Japanese descent who fled to Mexico and South America to avoid criminal trials on charges of espionage and possible sabotage. Due we owe reparations or an apology to this group?

3) We are at this time studying "covert actions" and the withholding of information from the Congress and its committees. We have heard evidence of falsification of testimony to protect covert actions in the national interest against communist threats in South America. During WWII, an extremely select group within the President's cabinet and limited to top wartime advisors, were privy to MAGIC, the best kept secret of WWII. The Hon. Senator Dan Inouye admitted that had it not been for the work of our intelligence, done in strictest covert action, the war might have been fought on the mainland. Documents were altered and "sanitized", even those submitted to the Supreme Court in testing the exclusion order. Forty-plus years later, our WWII government is accused of "misconduct". Would you agree that this area of action should be carefully considered before any action is taken to pass legislation based on the findings and recommendations of a flawed CWRIC?

Respectfully,
Lillian Baker
(Mrs.)Lillian Baker

Encl:Documents for inclusion in Hearing,
June 17, 1987, S.1009

Re: S1009, April 10, 1987 DOCUMENTED CASES OF DISLOYALTY
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.
For inclusion with the written Statement by Lillian Baker

SOURCE: Abstract: Hearings of Subcommittee of the Committee of Appropriations, House of Representatives, 77th Congress, First Supplemental National appropriations bill for 1943 - - $70,000,000 to War Relocation Authority , MILTON D. EISENHOWER,first Director,WRA.

77th CONGRESS, 1943

MILTON D. EISENHOWER, TESTIMONY

"+ + + I have visited with many people, some of them technical experts in whom I have confidence. I would say that from 80% to 85% of the Nisei, who are American-born citizens of Japanese descent and who have never been out of the United States are loyal to the U.S. + + + I would say, from all technical evidence I have, that 50% of the Issei, that is, the first generation of aliens, are possibly loyal to the United States.

"+ + + There is another group, however, called the Kibei-American-born citizens who returned from a considerable period to Japan and who were educated in Japan. My judgment is that a youngster born in this country but educated in Japan for from 3 - 5 years during his most impressionable years, that is, between the ages of 12 and 19, is likely to have when he returns here a stronger cultural attachment to Japan than he has to the United States.

"I do not have any idea what percentage of the Kibei would be deemed to be loyal to the United States under varying circumstances..."

[Refer to CHART 4, included with testimony, [Korematsu v.U.S.]

SOURCE: "Justice at War" by Peter Irons, (Page 140)

"Special Agent Ray Mize told the court, 'for the purpose of being questioned as to violation of the curfew regulation', Mize said that he had asked Yasui why he deliberately courted arrest, and testified that Yasui answered that he felt that the order 'was unconstitutionl+ + +', Mize added, 'and Mr. Yasui stated that when thinking it over he did not think it would be a very good reflection (on the Japanese colony)'+ + + "

When questioned what he would do if he was in command of the West Coast, Yasui stated that "I feel that I would intern all Japanese aliens and Japanese citizens." [Yasui v. U.S.,Nov.1944]

DOCUMENT #14

Re: S1009, April 10, 1987 Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.

For inclusion with the written Statement by Lillian Baker.

Source: "Pacific Citizen", August 28, 1981, re: CWRIC Hearings, San Francisco, California.

· "Elaine Black Yoneda, wife of retired longshoreman, Karl Yoneda, described the fear that her family lived under during the reign of the arauding Manzanar Black Dragons, the pro-Japan group who terrorized camp internees, and beat up loyal Japanese American leaders."

"On the issue of reparations, Yoneda urged monetary reparations which would not really be too much burden on the economy considering 'the Defense Department is spending a trillion and one half dollars'."

August 27, 1946, the Treasury Department lifted 'practically all' Issei bank accounts frozen since Dec. 7, 1941, by General Ruling 11A. [Reported in "Pacific Citizen", Aug. 28, 1981]

"CAMP NEWSPAPERS COMING HOME" by Sachi Seko (Salt Lake City). "Long after we are gone, it will be the written word that bears our testimony. The camp papers are a record of daily events as they occurred. It is important to preserve this documentation." [Sachi Seko worked on Gila News Courier. The CWRIC refused to consider articles from WRA center newspapers as "valid" because according to the Commission, all writings "were censored". Sachi Seko's article states otherwise. The article appears in Aug.28, 1981 "Pacific Citizen", JACL's official publication.]

Source: "Pacific Citizen", August 28, 1981, re: CWRIC Hearings, MABEL T. OTA TESTIMONY -- Mabel Ota testified that when the evacuation came, she rented her home and the home of her alien parents for the duration, and the rents paid the mortgages. When the WRA called for volunteers to "prepare for resettlement", she and her husband, Fred, volunteered and were driven by car to Poston, Arizona war relocation center--the car loaded with many of their personal belongings.

Evacuee volunteers prepared the WRA center at Poston, Arizona. Fred became general manager of Community Enterprises, and Mabel T. Ota became Head Librarian.

Fred's job was to open stores: barber shops, beauty shops, whatever was needed in the community.

Mabel T. Ota testified that by the latter part of 1942, the administration began encouraging people to the the camp if they could find a sponsor, i.e., a college or university or a job. The government arranged for the latter through special agencies set up in larger cities for this purpose; church groups and other political organizations arranged scholarships and/or financial assistance to almost 4,000 Americans of Japanese descent, plus student Japanese (aliens), to attend colleges and universities.

Source: "Pacific Citizen", Nov. 28, 1980

"35 years ago in PACIFIC CITIZEN", Nov. 24, 1945, "First Tule Lake group (about 1,000 repatriates) leave for Japan aboard the USS Randall, (at least 8,794 Nikkei, including 3,594 renunciants at Tule Lake, being deported to Japan, Justice Department official tell Congress."

Source: "PACIFIC CITIZEN", Oct. 18, 1980

"35 years ago in PACIFIC CITIZEN" (Oct. 18, 1945), "Allied Commission on Japanese Reparations has no intention of seizing United States properties of law-abiding Issei aliens for reparations, assures U.S. Representative Edwin W. Pauley."

SOURCE: "PACIFIC CITIZEN", Nov. 28, 1980

"35 years ago in PACIFIC CITIZEN", (Nov. 26, 1945), Salt Lake Nisei, Jiro Sugihara, found guilty in draft violation trial; refused to report for army induction from Topaz (WRA) camp."

SOURCE: RAFU SHIMPO (Los Angeles Japanese Newspaper),Mar. 31, 1976: Violence erupted by pro-Japan forces at Manzanar, December 6, 1942 -- prior to the "loyalty oath" questionaire that was distributed in February 1943.

DOCUMENT #15

RE: S1009, April 10, 1987 HEARING: June 17, 1987, U. S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.

For inclusion with the written statement by Lillian Baker.

RAFU SHIMPO, Los Angeles Japanese Newspaper, Oct. 7, 1981 (Source)

"+ + +March 21, 1942, many of your friends and JACLers went into Manzanar voluntarily even before the camp was ready to occupy.+ + + " Letter to Editor from Joe Kurihara

(Source) AMERASIA JOURNAL 1974, by Joe Kurihara

"+ + + April 12, 1942, you (James Oda*) and your friends together put the following article in The Manzanar Free Press:

> THE CITIZENS OF MANZANAR WISH TO EXPRESS IN PUBLIC THEIR SINCERE APPRECIATION TO GENERAL JOHN L. DE WITT, HIS CHIEF OF STAFF, TOM O. CLARK AND COL. KARL BENDETSEN, FOR THE EXPEDIENT WAY IN WHICH THEY HANDLED THE MANZANAR SITUATION. THE EVACUEES NOW LOCATED AT MANZANAR ARE GREATLY SATSIFIED WITH THE EXCELLENT COMFORT THE GENERAL AND HIS STAFF HAVE PROVIDED THEM. CAN'T BE BETTER, IS THE GENERAL FEELING OF MANZANAR CITIZENS. THANK YOU, GENERAL (EMPHASIS IS OURS)."

*James Oda testified before the CWRIC and has appeared in debates as a proponent for monetary reparations and a public apology.

DOCUMENT #16
Re: S1009, April 10, 1987 Documented cases of disloyalty
Hearing: June 17, 1987, U.S. Senate on Governmental Affairs of the U.S. Senate Judiciary Committee, Hon. David H. Pryor, Chair.
For inclusion with the written statement by Lillian Baker

Source: Declassified
E.O.11652, Sec. 3(E) and 5(d) or (e)
NND 770091, NARS
June 7, 1977

A TRUE COPY
CONFIDENTIAL
El Centro, California
December 6, 1942

MEMORANDUM FOR THE OFFICER IN CHARGE.

SUBJECT: Conditions at Poston Relocation Center, Poston, Arizona

A reliable informant has supplied agents with the following information: Many of the more dangerous Japanese, after they were apprehended, were interned instead of being sent to a relocation center. After a period of internment, they were removed to the relocation center. Prior to their removal to the center, there were printed in the center the rules and regulations promulgated for the conduct of the Japanese occupants of the camp. These rules and regulations were printed in the JAPANESE LANGUAGE and constituted the only matter of any kind which was permitted to be printed in any language other than English. Immediately upon their arrival at Poston, the former internees went to the office of the camp and requested that they be given printed copies of all regulations which had theretofore been printed, giving as the pretext that they were unacquainted with the regulations and wanted to "study them." Copies were given to them as requested. But, instead of their being kept in the camp for study purposes, these former internees immediately mailed them intact to the SPANISH CONSUL IN SAN FRANCISCO, CALIF., who in turn is reported to have, using his diplomatic immunity, mailed them direct to JAPAN, to be used for propaganda and other purposes. This information was given to informant by TOY NAKASHIMA, a loyal Japanese, who has twice been brutally beaten. It is assumed by agents that WDC Headquarters knows the names of many of the above-referred to offenders, since NAKASHIMA furnished to the informant a list of thirty-five names of men he knew were members of the pro-Axis group, which list in turn was given to NORRIS JAMES, Press and Intelligence Officer at Poston. Informant, who has had a long acquaintance with the Japanese in the Imperial Valley, and who, agents know, was of great aid to the Federal Bureau of Investigation, prior to, and after, Pearl Harbor, is of the opinion that all of the trouble in the relocation camps is part of a well-organized scheme directed from Tokyo, and that the SPANISH CONSULATES are acting as mediums for the exchange of information.

A. H. Moore, Special Agent, CIC
Albert M. Franco, Agent, CIC

Received Dec 23 P.M.(1942) WDC & FOURTH ARMY WCCA

STATEMENT
OF
ROY HUNDORF
ON BEHALF OF
COOK INLET REGION, INC.
ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION ACT, S. 1009

Mr. Chairman and members of the Committee, my name is Roy Huhndorf. I serve as President of Cook Inlet Region, Inc. (CIRI) and I am presenting the following testimony on behalf of CIRI.

Presently before the Senate Governmental Affairs Committee is the "Aleutian and Pribilof Islands Restitution Act," S.1009.

Cook Inlet Region, Inc. (CIRI) is the Alaska Native Regional Corporation located in the Cook Inlet area of Alaska. It has 6,300 Alaska Native shareholders, over one-fourth of whom are Aleut people. While CIRI supports fully those provisions of S.1009 which provide individual and trust compensation to the Aleut people, we must object strenuously to the provisions of Section 309 which creates the surplus property bidding account which precludes the benefit of a settlement to all the Aleut people. The problem with this provision falls in two main areas.

First, the explanation for the proposed payment under Section 309 to the Aleut Corporation raises substantial concerns regarding the fulfillment of the Congressional intent to compensate the Aleut people. The Aleut Corporation has, at various times and places, stated distinct rationales for this proposed payment. Those rationales, and considerations with respect to each, are as follows:

"Compensation to the Aleut People." This has been the only consistent explanation for this exclusive corporate benefit: "The present legislation affords the Aleut people, through the Aleut Corporation, the compensation found by the Commission to be appropriate in this instance. This statement was made by John C. Kirtland, Esq. before the Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary (April 29, 1987).

In fact, the majority of the Aleut people do not belong to the Aleut Corporation. Under the Alaska Native Claims Settlement Act (P.L. 92-203), an Alaskan Natives' membership as a shareholder in an Alaskan Native Regional Corporation was not based on ones family heritage or place of residence, but on ones choice of enrollment in one of the 12 Alaska Native Regional Corporations in 1971. Cook Inlet Region, Inc., the Anchorage based Native Regional Corporation, has over 1,600 Aleuts as shareholders, none of whom would benefit under Section 309 of S. 1009. Nor would any of the approximately 4,000 other Aleuts who are shareholders of the other 10 Regional Corporations.

"Compensation for lost land on Attu Island." The Aleut Corporation has asserted a claim under Section 309 of the Bill for 35,737 acres, valued at $500 per acre, for lands on Attu Island which were unavailable for selection under the Alaska Native Claims Settlement Act of 1971 (ANCSA). In fact, however, the Aleut Corporation received its full maximum entitlement of lands under ANCSA. The inability to make land selections on Attu Island was fully compensated for by the right to acquire lands elsewhere under ANCSA. The Aleut Corporation's entitlement was not diminished by the inability to make selections on Attu Island. Indeed, absent on entitlement under ANCSA, neither the historical village on Attu, nor the Aleut Corporation, had any legally recognized claim to ownership of the lands. Payment on this basis is duplicative of benefits under ANCSA and, if allowed, should be extended to all ANCSA corporations who were unable to make selections in withdrawn and reserved areas.

"Compensation to the Attuans." As a final rationale for Section 309, the Aleut Corporation has proposed that it is the beneficiary of an unwritten assignment of claims by those residents of Attu who were captured by the Japanese forces and interned in Japan during the war. This group of Internees apparently numbered about 40, of which one or more were enrolled to other Native Regional Corporations, and of which about 18 presently survived. No provisions for benefits to these survivors has been made by the legislation or by the Aleut Corporation.

As a second fundamental problem, Section 309 of the legislation will threaten the fulfillment of CIRI's own ANCSA entitlement. Because of the lack of available lands in the Cook Inlet area of Alaska, and unlike the situation of the Aleut Corporation, CIRI's federal entitlement remains unfulfilled to this day. As the result of several enactments, including CIRI's waiver of claims to the lands of the Alaska Railroad in 1982, the remaining mechanism to fulfill most of CIRI's entitlement is the surplus property bidding right mechanism. That mechanism has been very difficult to administer, and has met with only limited success (approximately one-third fulfillment of the total bidding rights in 7 years). Recent developments, such as the decline in surplus properties, and the advent of special "cash only" property dispositions, have severely impaired this process. The addition of more Native Corporations with surplus property bidding rights inevitably will exacerbate these problems. Once the precedent of adding more Native Corporations to this mechanism is established, more and more corporations will pressure the Alaska delegation and Congress in general to follow this approach. CIRI firmly believes that this process will leave CIRI unable to fulfill it substantial remaining entitlement.

CIRI believes that an alternative approach to Section 309 would be appropriate. The alternative should be one that would not provide a windfall to a single Native Corporation, nor exclude many of the intended Aleut beneficiaries, nor threaten the entitlement of another Native Corporation. Instead, Section 309 should properly benefit all the Aleut people, and the payment should be made directly to the Aleut people.

Mr. Chairman, thank you for the opportunity to testify before you today on these matters of importance for CIRI's 1,600 Aleut shareholders.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 17, 1987

The Honorable David Pryor
Chairman
Senate Subcommittee on
Federal Services, Post
Office and Civil Services
601 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

I appreciate this opportunity to present the views of my administration concerning the compensation of Alaska's Aleuts and Japanese Americans for injustices and losses experienced during World War II. Through S.1009, a bill to accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians, Congress recognizes the suffering, hardship, and irreparable losses of the Aleuts and Japanese Americans. This letter will primarily address provisions directed at the Alaska Aleuts.

The Aleuts' representatives will express much better than I can the personal and cultural tragedies that occurred as a result of United States policies. I will briefly summarize the report of the Commission on Wartime Relocation and Internment of Civilians to emphasize the debt owed to the Aleuts and to show that some acts occurred for which no compensation can atone.

In June and July of 1942, 881 Aleut citizens of the United States were forced to leave their homes, most on less than 24 hours notice. They were permitted to take with them virtually none of their worldly possessions. Many of these citizens were held by the Federal government in settlements far away from their homeland until as late as April 1945, under conditions described as "deplorable" by the Commission.

The Aleuts are a hardy and resourceful people. For some ten thousand years, they have carved out an existence in one of the most physically forbidding parts of our inhabited world. They developed a complex culture and a wealth of tradition, racial and cultural pride, and religious faith.

These proud people were herded into quarters that were uninhabitable by any standards and denied proper food, medical care, sanitation, privacy, education and the dearest of all American rights, freedom. For three years, they suffered under these conditions, watching their relatives gradually succumb to tuberculosis, pneumonia and other diseases. Almost one out of every ten eventually died for reasons related to their internment. Many of those who were lost were Aleut elders who had sustained and carried the knowledge of their culture.

The report of the relocation commission tells how U.S. military occupation forces had pillaged and ransacked the Aleut homes and left their islands dangerously strewn with discarded military paraphenalia and live ammunition. Priceless and irreplaceable religious icons were gone forever. Family possessions were plundered and their homes were destroyed. When the survivors were allowed to return to their communities, they had to reconstruct their homes. Some communities could never be rebuilt. The combined effect of these policies and actions was very nearly the total loss of a people and culture.

Not only do the Aleuts merit the compensation contained in S.1009 for their suffering and losses during World War II, but they also deserve assistance from the Federal government. This assistance would strengthen their community and cultural identity, and would help them to achieve a lifestyle of their choosing based on traditional values in their historical homeland.

The State of Alaska urges the United States Congress to enact S.1009, which would give the Aleuts the central responsibility in planning for and administering the trust funds and the activities that would restore the communities and the land. The Aleut people have the ability to carry out these provisions. The Aleuts have recommended that the Aleutian Pribilof Islands Association be designated to carry out these measures. We believe that it is an organization that has the leadership and management capacity to act effectively on behalf of the beneficiaries of S.1009.

The enactment of this legislation by the Congress would not diminish services and capital programs developed and administered by the State of Alaska for the affected communities. The State is taking steps to assist in the development of the economic self-sufficiency and future viability of the Aleutian Pribilof region. Our commitment is, and will continue to be, to the present and future development of Alaska. S.1009 recognizes the United States' obligation for specific past actions.

I also wish to express my support for the compensation of Japanese-Americans for their internment and personal losses during the same period. Many of these citizens live in Alaska and contribute greatly to the cultural and economic strength of our State. The injustice that they and their families experienced during World War II can be neither justified nor fully compensated.

Throughout the course of your hearings you will receive testimony to highlight both the need for these measures and the means to implement them. I am hopeful that S.1009 will receive favorable consideration by this subcommittee and the Congress.

Thank you for your consideration of my views.

Sincerely,

John W. Katz for
Steve Cowper
Governor

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young

WRITTEN TESTIMONY SUBMITTED BY EDGAR C. DOLEMAN TO THE U.S. SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS ON S1009. A BILL TO ACCEPT THE FINDINGS AND TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS.

5 JULY 1987

A severe indictment of the actions of the Committee whose findings and recommendations S1009 would implement was written by Kiyoaki Murata, former editor of the Japan Times. The article was first published on 18 August, 1983 in the Asahi Shimbun and reprinted in the Pacific Citizen on 16 December, 1983.

Murata says; "The recent attempt to portray the World War II relocation of persons of Japanese descent as a travesty of justice is a falsification of history." ... "The Commission report is ... one-sided and unfair." "Its purpose was to condemn the U.S. government's actions and recommend payment to the 'victims' ".

Murata was the last alien to enter the U.S. before Pearl Harbor. He found himself in a Relocation Center where he says; ".. the authorities made every effort to minimize the hardship for relocatees" and, "Those who remained in the centers until the end of the war did so primarily because they preferred the comfort of the camps to the uncertainties of life on the outside. He also said; "in May 1943, after only nine months at a relocation center in Arizona, I was able to leave for Chicago where I worked my way through school.

The major complaints of those claiming reparations are that there was no military necessity for their relocation and that their civil rights were violated.

As for the first complaint; the concrete evidence available was that our Pacific fleet was at the bottom of Pearl Harbor and our Army was unable to defend the West Coast against an invasion of which the enemy was fully capable; the West Coast was where most of our aircraft, and much of our shipbuilding, industry - both vital to us and our future allies - were located; several hundred Americans of Japanese Ancestry had renounced their American citizenship immediately after Pearl Harbor and all three (100%) of the residents of Japanese ancestry on the Island of Niihau, HI had aided the Japanese pilot, downed on Pearl Harbor day, to recapture his gun, which had been taken away from him by the Hawaiians, and terrorize the Island. Two of the residents were Americans of Japanese ancestry. With such evidence could any sane commander risk leaving Japanese in a possible theater of operations where not only we but they would be in grave danger. These indications were above and beyond the claims of the Japanese Consul in Los Angeles that he had recruited second generation Japanese, including those in the U.S. Military, to provide information. This knowledge was obtained from "Magic" intercepts.

As for the violation of civil rights, there were 16 million Americans in uniform in World War II who left their jobs and their families. Many suffered significant losses. Nearly three hundred thousand died and twice that number were wounded. Of these Americans approximately 30% were drafted. They were forced into involuntary servitude despite an explicit constitutional prohibition against such action. Our Supreme Court, throughout our history, has ruled that in time of national emergency civil rights must be subordinated to the national peril. It is thus in the case of the draft. It was ruled thus by our Supreme Court in the case of the relocation of residents of Japanese ancestry from our West Coast. To say that the relocation was motivated by hysteria, racism, and lack of political leadership is absurd, particularly in view of the fact that President Franklin Roosevelt, who signed Executive Order 9066, is undoubtedly the president least likely to be charged by history with any of the three failings charged.

As for the claim that no Japanese resident of the West Coast was ever indicted or found guilty of espionage or sabotage, I suggest that The Federal Bureau of Investigation be required to testify concerning the 3,000 residents of Japanese ancestry that they picked up immediately after Pearl Harbor and as to the results of the break-in of the Japanese Consulate on the West Coast.

Edgar C. Doleman
Edgar C. Doleman
Lt. Gen. U.S. Army (Ret)

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Testimony on behalf of

FRIENDS COMMITTEE ON NATIONAL LEGISLATION
and
AMERICAN FRIENDS SERVICE COMMITTEE

on S. 1009

A Bill to Accept the Findings
and to Implement the Recommendations of the
Commission on Wartime Relocation
and Internment of Civilians

before the
Subcommittee on Federal Service, Post Office and Civil Service
Committee on Governmental Affairs

United States Senate

June 17, 1987

Mark Hulbert *Clerk, General Committee*
Carolyn C. Rudd *Clerk, Executive Committee*
E. Raymond Wilson *Executive Secretary Emeritus*
Edward F. Snyder *Executive Secretary*
Ruth Flower *Legislative Secretary*
Nancy C. Alexander *Legislative Secretary*
Alison D. Oldham *Legislative Action Coordinator*
Selig Goodman *Development Secretary*
David M. Boynton *Associate Secretary for Administration*
Cindy Darcy *Native American Advocacy Project*

Testimony on S. 1009

FRIENDS COMMITTEE ON NATIONAL LEGISLATION AND AMERICAN FRIENDS SERVICE COMMITTEE

I am Ruth Flower, Legislative Secretary with the Friends Committee on National Legislation. This testimony is presented on behalf of my own organization and the American Friends Service Committee.

The Friends Committee on National Legislation (FCNL) is a Quaker lobbying organization established in Washington D.C. 44 years ago to reflect the concerns of Friends and like-minded individuals on issues of peace and justice. The American Friends Service Committee (AFSC) is a service organization that was established in 1917 as a way of implementing Quaker beliefs in human equality, social justice and peace. AFSC has its national headquarters in Philadelphia, Pennsylvania, plus nine regional offices in the United States, and programs throughout the world. While neither organization tries to speak for all Quakers, our committee processes allow us to be guided by the views of a widely representative body of Friends from all over the country.

We come today to express our support for S. 1009, which would accept the findings and implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians (the Commission). We believe that the government decision to exclude 120,000 Japanese American civilians from the West Coast and to confine them in camps represents a massive failure to protect the constitutional rights that are so highly treasured in this country. We concur with the many individuals and organizations supporting S. 1009 that a recognition of this serious error, an official apology, and monetary compensation are entirely appropriate and necessary at this time.

Congress and the Commission have heard from survivors of World War II who lived many different parts of that history and who carry many different memories of that time. These hearings have begun an important process of healing and restoration that will undoubtedly strengthen this nation's commitment to its democratic ideals. It is to Congress's credit that the review of the decision to exclude and intern Japanese American civilians (Executive Order 9066) has gone forward. We urge you to complete the work begun by the Commission six years ago.

Friends' Historical Role. Friends (Quakers) on the West Coast were heavily involved in and affected by Executive Order 9066. Some of those interned were Friends or associated with Friends. Some individual Friends and Friends meetings (or churches) tried to help by holding property for internees, protecting farms, businesses and homes, and by keeping internees in touch with news from home communities. The AFSC not only made vigorous protest against the relocation order, but also attempted to minister to the emergency needs of these uprooted civilians. (See AFSC's 1942 Letter to Friends attached to this testimony). There were protests at the time, but the protests were drowned out by fears about the war, by the power ceded to the military structure at the time, by the lure of economic advantage and by racism.

We are deeply troubled by the fact that this government action has never been officially disowned, and that there is no statute or body of legal opinion which would prevent its repetition. In its 1942 letter to Friends, AFSC said "...If one minority of our citizens, without trial and without proven guilt can be forcibly moved under pressure, any minority under different circumstances of inflamed public opinion runs the danger of losing its democratic rights." That caution is still with us. Our continuing concern about the conditions that produced Executive Order 9066 -- the persistence of racism, the power of the military and the pervasive influence of economic greed -- motivates much of our present work with poor and disenfranchised people here and in other countries.

THE ISSUES

The discussion of this legislation has been wide ranging, including a variety of subjects approached from many points of view. Topics under discussion have included:

> The "military necessity" of Executive Order 9066.
>
> Conditions in the internment camps, whether harsh or healthful.
>
> The record of active and dedicated participation of the 442nd Regimental Combat Team, many of whose members left families behind in internment camps.
>
> The many accomplishments of Americans of Japanese descent, and the valuable contributions this ethnic group has made to this society.

While all of these points may be of interest to the historian trying to reconstruct an accurate picture of our recent past, or to the sociologist trying to understand the effects of racism, **none of these points is relevant to the bill that is before this committee or to the necessity to correct the action that was taken with Executive Order 9066.**

The central issue is the issue of due process. Our Constitutional guarantee of due process is sometimes the sole shield standing between an incensed public and its chosen target. This guarantee was written into the Constitution to assure, as much as possible, the continuation of the rule of law -- even in difficult times.

The massive denial of due process inherent in the relocation order meant that 120,000 individuals were deprived of their liberty and property -- and some even of their lives -- without an opportunity to face their accusers, to require proof of specific charges, and to seek a verdict from a jury of peers.

There was no attempt to sort out individual cases; Japanese American ancestry was considered sufficient cause for exclusion and internment. There were no disloyalty charges brought against any Japanese American civilian at the time. There were no trials on such charges; there was no evidence to be confirmed or refuted.

If the guarantee of due process had been upheld, the government would have been forced to come forward with evidence of the charges of disloyalty that were so casually made in the press. In fact, as later findings have confirmed, the government had no evidence to substantiate any such charges. **The mass internment was undertaken with the knowledge that individual cases would not stand the scrutiny of due process.**

The denial of due process has meant that these vague, unsubstantiated allegations have survived for decades. Now with the work of the Commission and Congress to investigate the history surrounding the relocation order, it is possible to establish facts that would have been known years ago, had the government recognized the Constitutional rights of each civilian.

The guarantee of due process is so central to the functioning of our democracy that the nation could literally fall without it. The Executive Order that denied this and other rights to Japanese American citizens and legal residents set a dangerous precedent. We support S. 1009 as a statement of a national commitment never to follow this precedent. We believe that the bill is also an affirmation that we will preserve the structure of our government as set forth in the Constitution and the Bill of Rights, as a shield against the racism, fears and other irrationalities that can beset any generation of Americans.

SECTIONS OF THE BILL

Congressional Apology: Congress frequently speaks for the American people, in passing resolutions, in calling on the President to take certain actions, in declaring days and weeks in honor of specific concerns or events, and in naming the purposes of legislation. It is entirely appropriate for Congress to accept the findings of an investigative body which point to a serious error in a previous government action, and to offer an apology on behalf of the nation to the affected group. We support Congress in this action. We are pleased that Congress would be speaking on our behalf in making this well-justified apology.

Compensation: The bill proposes a payment of $20,000 to each surviving internee, in settlement for the losses suffered by each person through the violation of their civil rights. The exclusion orders were in effect for just about three years. A settlement of $20,000 is truly modest compensation -- for the loss of one's home and livelihood, the loss of one's liberty and the impugning of one's honor. This payment is a token of recognition by the American people of the profound injury done to Japanese Americans due to Executive Order 9066. But this tangible evidence of recognition is necessary -- to the rest of us as much as to the surviving internees. An empty apology returns little, when so much was so easily taken away.

There are precedents for this type of settlement. For example, when courts or investigative bodies have determined that land was unjustly taken from a Native American nation, or that a treaty between the U.S. and that nation was violated, settlements are sometimes made through Congressional action. When the land cannot be returned, or when treaty rights (such as hunting and fishing rights) have been extinguished, cash settlements are sometimes offered, with certain payments apportioned to the remaining tribal members or to the tribe itself.

We urge the Congress to approve this section of the bill; the individual cash payments are integral to the Congressional apology and to the commitment against a repetition of such government action in the future.

Public Education Fund: The bill sets up a Civil Liberties Education Fund and permits the Board of Directors to disburse monies from that fund for research and education on the events surrounding the exclusion and relocation of Japanese American civilians, and on comparative studies relating to government action toward other minority groups in times of national crisis. Because of our concern that this country must learn from the errors made in regard to the relocation orders, we believe that the education fund portion of this bill is of great importance. We particularly support the section that encourages the dissemination of the hearings and findings of the Commission to textbook publishers and educators. Without such a coordinated effort, the next generation of students may well miss an opportunity to examine the circumstances surrounding this failure in our history, and to strengthen their own understanding of and commitment to the values we seek to protect in our Constitution and Bill of Rights.

Overall Funding: We recognize that Congress is grappling with an overblown deficit, and that there is a genuine reluctance to take on new expenditures. However, we would point out that the total appropriation for this bill is miniscule whether compared to the whole federal budget, to the military budget, or to the deficit itself. The entire price tag for this bill amounts to only about $15 per taxpayer. We would encourage Congress to look for economies to balance out this necessary expenditure, particularly in the military budget, since the original government action was undertaken pursuant to a military strategy.

Secondly, we believe that this expenditure represents partial payment of a debt. If we do not pay this debt now, while some of the survivors of the internment camps are still living, we will pass on to our children a debt that can never be repaid. It is important to recognize the weight of this moral debt even as we grapple with the immediate reality of a fiscal debt, and to take up this opportunity now to restore the equities that were disturbed by the relocation orders in 1942.

Aleutian and Pribilof Islands Restitution: The second major part of S. 1009 deals with the findings of the Commission in regard to the Aleut native people and provides restitution to citizens of the Aleutian and Pribilof Islands for personal and community property loss, and for physical hardship suffered during the war, and authorizes the removal of hazardous debris and ammunition from populated areas. We support these provisions.

In 1942, when two islands in the Aleutian chain -- Attu and Kiska -- were invaded by Japanese troops, the government deemed it necessary to evaculate some 880 Native residents from a number of villages to temporary camps in southeastern Alaska. The evacuation was necessary both for the safety of these Alaska Natives, and in order to make way for occupation of the villages by American troops. Some 40 Aleuts were taken as Japanese prisoners of war to Hokkaido Island, Japan until 1945.

Conditions were harsh in the relocation camps. Almost one in ten people in the camps died from lack of food or medical care, inadequate sanitation facilities, epidemics, cramped quarters and other deplorable conditions over the three year period of internment.

We do not disagree that it was necessary to remove these Aleut people from their homes when those villages had become the theater of war. The Aleuts' case for redress does not derive from their actual relocation and internment but from the deplorable treatment they suffered during internment, when they were treated like prisoners rather than persons whom the government was protecting. While the Pribilovians were allowed to return to their villages in 1944, the Aleuts were not able to return to their homes until 1945. According to the Commission, this was partly because of apparent government indifference to the well-being of the Aleuts, as it provided transportation and materials for the reconstruction of homes.

Not only did the government fail to provide reasonable care to the Aleuts, but three years later, when those who survived internment returned to their abandoned villages, they found only rubble or foundations of buildings remaining after U.S. troop occupation. In all of the evacuated villages, homes had been ransacked, property damaged, and community treasures, particularly religious articles such as icons brought generations ago from Russia, destroyed, stolen or lost. Adding insult to injury, there was no government assistance for the rebuilding of the destroyed homes, or compensation for individual and community property losses which resulted from government actions.

S. 1009 would implement the recommendations of the Commission in regard to the Aleuts and would authorize $12,000 for each of the few hundred surviving Aleuts who were evacuated from their homes during the war. The bill would set up a $5 million trust fund for the benefit of the seven affected Aleut communities as a whole. Funding would be used for elderly assistance, student scholarships, cultural and historical preservation, and improvements in community centers, and would in other ways improve the lives of the Aleut people. This community-oriented funding is especially important to the Aleut people, as they have traditionally maintained a strong community life. In addition, the bill allocates $1.4 million to rebuild, restore or replace churches and church property destroyed during the war, and $15 million for the Army Corps of Engineers to clean up abandoned military buildings, equipment, ammunition and other hazardous debris.

Finally, the bill proposes a settlement in regard to Attu Island. Earlier legislation had proposed that Attu Island be conveyed to the Aleut Corporation. However, the island is now part of the National Wilderness Preservation System. Because potential development of the Island by the Aleut Corporation would be inconsistent with the "Alaska National Interest Lands Conservation Act," a compromise was negotiated during the 99th Congress to provide compensation in lieu of land conveyance. The Aleut Corporation would be permitted under the bill to bid on federal surplus property for land valued at up to almost $18 million dollars. This equals the value of the eastern part of Attu Island occupied by Aleut people for subsistence purposes. In addition, the Interior Secretary would be authorized to convey to the Aleut Corporation the traditional Aleut village site on the island. While we regret that the people native to Attu Island have lost their traditional homeland due to circumstances of war, it is our understanding that this compromise arrangement is acceptable to the Aleut people.

CONCLUSION

Redress in this case is an issue that transcends the Japanese American community. It would be a clear affirmation of a commitment to basic human rights. No minority group in this country, under the weight of long time discrimination and hostility, will ever feel totally free of the possibility of official repression. But we believe that a legislative precedent, in the form of this bill, would be an important step in inhibiting any such future occurrence.

The piece of history uncovered by the Commission's report is indeed a sad one. In spite of all our wishes to the contrary, we cannot remake history so that it more closely reflects the ideals that we cherish. But we can govern the responses we make today to the rediscovery and clear documentation of an egregious error. We can admit and correct that error.

We urge you to support S. 1009.

Text of AFSC 1942 Statement

The
JAPANESE
EVACUATION

A message from the American Friends Service Committee to the Society of Friends and to our fellow Christians.

The
Japanese Evacuation

The forced mass evacuation of more than 100,000 Japanese from the West Coast creates a special responsibility for us to help preserve the ideal of brotherhood, and of political and religious freedom in our country. These fellowmen, nearly all of whom have thought of themselves as members of our nation, and two-thirds of whom are American citizens, have been placed under a ban without accusation and without trial. Bewildered and grieving old women and men, the sick and feeble, babies and young children—all have been forced to leave their homes and most of their possessions. Nearly two thousand students in our universities and colleges have had to leave their studies.

The fault rests squarely upon us as a people who have permitted prejudice, fear and hatred to flower into intolerance and violence, and now in a war situation have allowed the government to arrange this evacuation in direct violation of our heritage of social and racial justice. The United States was founded upon the premise that individuals of many differing races, religious beliefs, and cultural patterns could live together harmoniously and could create a strong, just and tolerant nation.

As a people and as a government we must not blind ourselves to the implications of such action. If one minority of our citizens, without trial and without proven guilt, can be forcibly moved under pressure, any minority under different circumstances of inflamed public opinion runs the danger of losing its democratic rights. Naturally, we recognize the right and obligation of the government to protect itself against sabotage, and to detain individual aliens definitely proved to be engaged in such activities, but we cannot concede the right of a government to take such arbitrary mass action against a group as a whole, most of whom are loyal champions of democratic institutions, and grievously disturbed by the Japanese attack upon the United States.

This action toward Japanese as a group intensifies the racial tensions and unrest already present in this country, particularly among Negroes, who wonder now whether the few rights they have won may not be taken from them, and who ask how much longer they are to be denied their full share of opportunity in American life. This compulsory mass evacuation adds one more tragic chapter to the sad history of racial discrimination and intolerance, of anti-alien land laws, of discriminatory exclusion acts, to the prejudices and misunderstandings and economic exploitation, all of which had some part to play in the desperate plunge of the Japanese military into war against the United States. We should not now by our deliberate action add fuel to the flames of Japanese propaganda within Japan and throughout Asia and Africa against us and the white man in general. We should not follow the evil Nazi policy of forcing people from their homes because of race or origin.

An unbelievably bitter world will confront us at the end of the war. If we are to attempt to weave a pattern of world fellowship in which the threads of different cultures add luster and beauty to the design, we must begin now in our own nation to share the rights and privileges we claim. Greed, selfishness, fear and injustice will never make a united nation nor a peaceful world.

During this movement of the Japanese people, the American Friends Service Committee, in cooperation with many other organizations and individuals, has sought to do what it could to minister to the emergency needs of individuals and especially

of old people and children. Many in the affected areas have already expressed in many concrete ways their fellowship with the misfortunes of their Japanese neighbors. And now the American Friends Service Committee in cooperation with churches and other interested agencies, has been officially requested by the War Relocation Authority to render special service in connection with the transfer of Japanese students from proscribed areas on the West Coast to inland institutions. After due deliberation, this responsibility has been accepted.

It seems appropriate, however, that in undertaking this service, a statement should be made to our constituency making it perfectly clear that we do not accept this evacuation as a matter of course, nor approve it in principle. The events of the past few months have caused us deep humiliation and profound concern.

While evacuation is largely centered on the West Coast and has been caused by pressure within those states, it behooves us all to examine our own spirits to see whether our own lives are free from the corrupting influences which are responsible for the oppression of fellow citizens.

As part of that penitence, we have felt that we should share in such ways as our

limited resources permit in breaking the force of this calamity which has come upon the Japanese population. One of the ways we can help is in the relocation of students so that they may continue their preparation for a useful life among us.

The opportunity to place Japanese students in educational institutions so that they can pursue their studies and be integrated in the life of communities throughout the land is the more important because it is based upon the recognition that it would be contrary to the American pattern of life to segregate them indefinitely in detention camps or ghettos. This principle must determine the eventual disposition not only of students but of all the evacuated Japanese, and we believe that the responsibility at the earliest possible moment to take steps looking toward a permanent solution in accordance with this principle rests upon the people of the entire nation as well as upon the government.

It may be that opportunities to help in such efforts will be open to us, and if so we hope we shall be wisely guided in meeting them. But most of all we wish to call for a reexamination of the spirit of our own lives and a dedication anew to a reverence for that of God which is in every man.

IF NOT WWII JAPANESE-AMERICAN RELOCATION...WHAT WAS SECOND CHOICE?

by Bill Kubick

Of the relatively articulate few who support WWII relocation of Japanese-Americans away from the critical Western Defense Command's Red Zone, I probably came to my position through the most circuitous route. First off, my involvement with the phenomenon dates back to co-existance among J-A's in Southern California dating back to 1922. This tenure should at least grant me relief from 'Johnnie-Come-Lately' connotations. For some unfathomable cause, most authors and self-proclaimed authorities who have blatantly addressed 'relocation' were born after 1942. The implication might be taken that such a late appearance on the scene might free them from on-the-spot prejudices suffered by older observers.

As mentioned, my own arrival at a fixed position on 'relocation' came in a roundabout, unstructured, fashion...with final focus only being established after in-depth research and soul-searching. I'll be the first to admit, that I had misgivings early-on as to the deep fundemental implications assumed in 'relocating' 115,000 Japanese-Americans, many of them citizens, away from the West Coast. Could it be done another way... were there alternate solutions?

Before any cogent analysis may be undertaken, one salient point must be encountered head-on. Did the Japanese-American presence on the West Coast pose a significant problem ... a problem that called for an immediate solution? Redress and Reparations forces, almost in unison, refuse to grant such an emergency existed. They say that such fears were more the products of a hysterical white community in tandem with an over-reacting military command. Such theorists also dismiss threats of Japanese West Coast invasion as jingoistic propaganda.

Some pressing problems concerning Japanese-Americans did persist early in 1942... and here are some of them:

- --General dislocation and disorientation of J-A community resulting from Pearl Harbo
- --Need to address immediate needs of J-A's for food, clothing, shelter and security.
- --Need to consider what would happen to resident Japanese-Americans if Japan invaded the West Coast.
- --Widespread sympathy of older J-A's for cause of Imperial Japan, evidenced by large financial contributions to the Emperor dating back to '30's.
- --Close family ties between Issei, foreign-born, and Nisei, American-born (who averaged under 15 years).
- --Heavy evidence of clandestine radio activity on West Coast resulting in loss of U.S. ships as they left their ways.

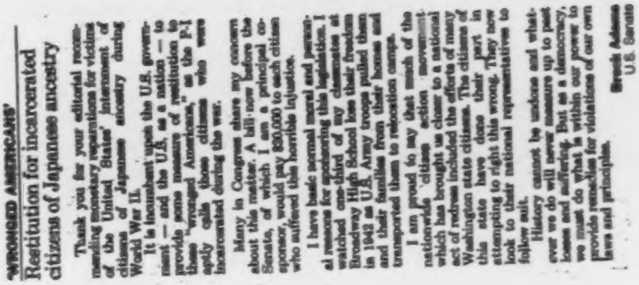
--Pressures on military and civilian authorities to make immediate decisions.

In this regard, it's interesting to note that the 1942 policy of the Japanese American Citizens League recognized the complexity of problems facing the Japanese-American community and was as frustrated as everyone else as to a feasible solution. Strangely, the same JACL that supported 'relocation' in 1942, now villifies the action of FDR...and shamefully petitions for reparations. If they supported FDR then, why the change of heart now?

After all this passage of time, 43 years, and despite endless exchanged acrimony, this observer remains more convinced than ever that FDR and Gen. DeWitt were right... and 'evacuation' was the only solution. To those who wring their rights-conscious hands in dispair, I suggest further objective research. Obviously, problems existed for 1942 Japanese-Americans that wouldn't go away. Copies of JACL papers of that time will attest to this fact. Which leads us to confront all the conglomerate groups and organizations that advocate reparations with the ultimate question: "If not 'evacuation' what was the next best solution?"

The answer, or absence of a reasonable one, sums up the entire 43-year-old brouhaha. President Franklin D. Roosevelt, with secret unrevealed documentation of J-A treachery, as evidenced in the broken Magic Cables, and in light of other factors, was correct in implementing EO9066. There was no other way!

Seattle Post-Intelligencer, Thursday, April 30, 1987 A13



'WRONGED AMERICANS'

Restitution for incarcerated citizens of Japanese ancestry

Thank you for your editorial recommending monetary reparations for victims of the United States' internment of citizens of Japanese ancestry during World War II.

It is incumbent upon the U.S. government — and the U.S. as a nation — to provide some measure of restitution to these "wronged Americans," as the P-I aptly calls those citizens who were incarcerated during the war.

Many in Congress share my concern about this matter. A bill now before the Senate, of which I am a principal co-sponsor, would pay $20,000 to each citizen who suffered this horrible injustice.

I have basic normal moral and personal reasons for sponsoring this legislation. I watched one-third of my classmates at Broadway High School lose their freedom in 1942 as U.S. Army troops pulled them and their families from their homes and transported them to relocation camps.

I am proud to say that much of the nationwide citizen action movement which has brought us closer to a national act of redress included the efforts of many Washington state citizens. The citizens of this state have done their part in attempting to right this wrong. They now look to their national representatives to follow suit.

History cannot be undone and whatever we do will never measure up to past losses and suffering. But as a democracy, we must do what is within our power to provide remedies for violations of our own laws and principles.

Brock Adams
U.S. Senate

COPY

Seattle, WA 9
May 2, 1987

Seattle Post-
101 Elliot Ave
Seattle, WA.

Dear Letters-to-the-Editor:

Sen. Brock Adams' letter(P-I, 4/30) sheds little new light on a Constitutional-Sociological controversy that has lingered over 45 years; rather, it reflects stepped up pressure from an alarmingly potent Japanese-American Congressional power lobby. Burrowing past the obvious emotionalism, these unanswered questions persist:

1). If J-A loyalties to Japan did not exist in 1942, why were they sending millions of dollars home in support of Imperial War Machine?

2). What of broken Magic Intelligence Cables that revealed a substantial J-A spy network to be in place on the West Coast...that included American-born Nisei?

3). Did "Magic" motivate FDR to sign EO 9066, which authorized evacuation?

4). What of clandestine J-A radio transmission facilities that were in place (this author witnessed one early in 1941).

5). If such radios didn't exist, why did early sinkings of our just-built ships abruptly halt with evacuation?

6). There were ligitimate fears of both Hawaiian and West Coast invasion early in 1942. 40 years after the Battle of Midway, Admiral Spruance stated,"If the U.S. had lost, nothing would have stood between the West Coast and the Japanese Fleet."

7). What of Pearl Harbor's effect on West Coast J-A community? They were devastated ...completely severed from credibility. In words of one of their own, Shonin Yamashita,PostonCamp evacuee, "We needed shelter, food, clothing...not rhetoric;the Camps were a God-send."

8). In an invasion, what would have been fate of J-A's? They would have been caught in a horrible whip-saw, in the middle of Japanese and American cross-fire.

For 45 years, almost since the phenomenon took place, latter-day pundits have second-guessed the action. But, none has offerred a more tenable or humane alternative. After researching the subject a like period, and amassing a voluminous array of documentation, I appreciate their failure to find an alternate. They, like I, couldn't find one... because over four-and-one-half decades have proved...evacuation was the only solution!.

Sincerely, Bill Kubick 3258 NE 104th St., Seattle, WA 98125
524-3825

Statement of The
International Longshoremen's & Warehousemen's Union
on S. 1009
the Implementation of the Recommendations of the Commission on Wartime Relocation and Internment of Civilians
Before The Senate Subcommittee on Federal Services, Post Office, and General Services

June 17, 1987

My name is Mike Lewis, and I am the Washington Representative of the International Longshoremen's & Warehousemen's Union. ILWU welcomes this opportunity to state our strong support for S. 1009, the Implementation of the Recommendations of the Commission on Wartime Relocation and Internment of Civilians.

As the only union that testified before Congress in 1942 against President Roosevelt's Executive Order 9066 and the actions committed by our government under its authority, we are particularly proud to participate at this hearing. Like the Japanese-American and Aleutian communities, ILWU members have waited 45 years for one of the most shameful outrages in our nation's history to be addressed by the U.S. Congress. We knew in 1942 what we know now: that long-standing racism and wartime hysteria triggered a mass violation of the civil liberties of an ethnic group the like of which should never occur in a constitutional democracy.

The testimony presented by the other witnesses at this hearing, and the detailed findings of the Commission on Wartime Relocation and Internment of Civilians, has confirmed that more than 120,000 innocent Americans -- many of them teenagers and children -- were unconstitutionally taken from their homes in the West Coast states on as little as three days' notice, deprived of their possessions and livelihoods, herded like cattle into trucks and vans, and confined in concentration camps for as long as five years, for no other reason than that they were of Japanese ancestry. Eighty percent of these people were U.S. citizens, and the remainder were deprived of citizenship only because of the discriminatory Oriental Exclusion Act of 1924.

as the most decorated of its size in the U.S. Army, their own families remained incarcerated at home as a threat to our nation's defenses. These very soldiers had to spend their home leave in the camps in order to be with their loved ones.

The experience of the Aleuts of Alaska during the war was equally shameful. Though some protective relocation may have been justified in view of actual attack by the Japanese, the internments of the Aleuts were needlessly repressive. The camps were located at abandoned canneries and mines and were exposed to the Alaska winter. Cooking facilities were not provided, and tuberculosis and other diseases became rampant. When the internees were allowed to return to their villages from two to four years after they were evacuated, they found their homes destroyed or ruined by the U.S. military units which had occupied them, and their churches looted, desecrated, or burned. Military debris and even live explosives still remain scattered over the Aleutian and Pribilof Islands where U.S. armed forces abandoned them.

The unique experience of the Japanese-Americans and the Aleuts during World War II, contrasted with the absence of any similar government action against Italian- or German-Americans, tells us that this was not simply a case of defensive overreaction to a threat of invasion. The Japanese-Americans would not have been interned, and neither they nor the Aleuts would have been deprived of their property and held under such barbarous conditions, if they had been white and their ancestors had come from Europe. War fever aside, this was racism, pure and simple -- an institutionalized assumption that an ethnic group of people were incapable of loving their country and that they were not entitled to the protection of the Bill of Rights enjoyed by white U.S. citizens.

By enacting the recommendations of the Commission's 1983 report, "Personal Justice Denied," S. 1009, co-sponsored by Senator Matsunaga and 70 other senators, affirms Congress's recognition of this sad truth. The trust fund authorized by the bill would provide a $20,000 payment for each surviving internee -- a token amount considering the transgression it symbolically acknowledges. The bill would also establish a civil liberties education fund to give the record of this sad chapter of American history more prominence in our national memory. It also states a formal apology to the Japanese-American community.

We urge this Committee and the Senate to adopt this long overdue measure. We thank Senator Matsunaga for his leadership on this issue. We thank you for holding these hearings and for giving us this opportunity to restate our views. And we hope that after 45 years this will be the last occasion on which it will be necessary for us and other groups to urge that this action be taken.

U.S. INTELLIGENCE PROMPTED WORLD WAR II EVACUATION DECISION OF WEST COAST JAPANESE

STATEMENT OF DAVID D. LOWMAN
JUNE 1987 HEARINGS

SUBMITTED TO THE SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES

UNITED STATES SENATE

RELATIVE TO S-1009

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MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE.

U.S. INTELLIGENCE IN LATE 1941 AND EARLY 1942 WAS UNEQUIVOCAL IN WARNING OF LARGE ONGOING ESPIONAGE OPERATIONS CONTROLLED BY THE JAPANESE GOVERNMENT ON THE WEST COAST OF THE UNITED STATES. THIS INFORMATION, PRODUCED BY THE U.S. INTELLIGENCE COMMUNITY, TOLD OF THE RECRUITING OF JAPANESE RESIDENTS FOR ESPIONAGE BY ALL JAPANESE DIPLOMATIC POSTS IN THE UNITED STATES. IT NOTED, 1) THAT WHOLE COLONIES OF JAPANESE SUCH AS AT TERMINAL ISLAND NEAR LOS ANGELES WERE HOTBEDS OF ESPIONAGE AND POTENTIAL SABOTAGE, 2) THAT A NUMBER OF JAPANESE BUSINESSES, CLUBS, AND LABOR ORGANIZATIONS HAD BEEN CONVERTED INTO ESPIONAGE UNITS, 3) THAT SPECIFIED TYPES OF LOCAL JAPANESE ORGANIZATIONS AND ASSOCIATIONS WERE CERTAIN TO BE GIVEN ESPIONAGE AND SABOTAGE FUNCTIONS, 4) THAT MORE THAN 25 PERCENT OF ALL JAPANESE RESIDENTS---ABOUT 30,000 PEOPLE---WERE OF DOUBTFUL LOYALTY, 5) THAT APPROXIMATELY 3,500 JAPANESE RESIDENTS COULD BE EXPECTED TO ACT AS AGENTS AND SABOTEURS, 6) THAT SEVERAL THOUSAND JAPANESE-AMERICANS EDUCATED IN JAPAN WERE SO DANGEROUS TO U.S. SECURITY THAT THEY SHOULD BE PLACED IN IMMEDIATE CUSTODIAL DETENTION, 7) THAT PORTS, AIRFIELDS, AND MILITARY BASES WERE UNDER OBSERVATION BY LOCAL JAPANESE WHO REPORTED TO THE JAPANESE GOVERNMENT, AND 8) THAT THERE WERE JAPANESE-AMERICANS LOCATED IN THE U.S. ARMED FORCES, FACTORIES, AND AIRPLANE PLANTS FOR SUBVERSIVE PURPOSES.

THIS INTELLIGENCE WAS A COMPOSITE FROM THE OFFICE OF NAVAL INTELLIGENCE (ONI), THE ARMY MILITARY INTELLIGENCE DIVISION (MID), THE FEDERAL BUREAU OF INVESTIGATION (FBI), THE INTELLIGENCE SERVICES OF THE ARMY SIGNAL CORPS AND THE OFFICE OF NAVY

COMMUNICATIONS, PLUS A PRIVATE ASSESSMENT FROM LT. CMDR. RINGLE, ONI'S LEADING EXPERT ON THE JAPANESE SITUATION ON THE WEST COAST. COLLECTIVELY, THIS GROUP REPRESENTED THE BEST INTELLIGENCE AVAILABLE TO THE UNITED STATES ON THE THREAT POSED BY THE JAPANESE POPULATION ON THE WEST COAST WHEN EXECUTIVE ORDER 9066 WAS SIGNED ON FEBRUARY 19, 1942.

EVERY SINGLE ONE OF THESE SOURCES AGREED THAT THE WEST COAST JAPANESE DID INDEED PRESENT A THREAT TO THE SECURITY OF THE UNITED STATES. THERE WAS A DIFFERENCE OF OPINION ON THE SOLUTION. J. EDGAR HOOVER (BUT NOT THE FBI WEST COAST FIELD OFFICES), AND LT CMDR. RINGLE (BUT NOT THE NAVY), THOUGHT THAT AFTER AN INITIAL ROUNDUP OF APPROXIMATELY 10,000 SUSPECTS THAT ONLY A CAREFUL WATCHING OF THE REMAINDER WOULD BE NECESSARY. FOR A VARIETY OF REASONS THE ARMY AND NAVY FELT THAT THIS WAS NOT A PRACTICAL SOLUTION TO THE IMMEDIATE THREAT.

IN ANY EVENT IT IS CLEAR THAT THE MOTIVATING FORCE BEHIND THE EVACUATION WAS THE INTELLIGENCE BEING FED ON AN ALMOST DAILY BASIS TO THE PRESIDENT AND HIS KEY ADVISERS. THE PICTURE PRESENTED WAS A DANGEROUS AND PERHAPS UNMANAGEABLE SITUATION ON THE WEST COAST AT A TIME WHEN THE MILITARY SITUATION WAS, TO SAY THE LEAST, BLEAK.

JOHN J. McCLOY, ASSISTANT SECRETARY OF WAR UNDER ROOSEVELT, AND THE ONLY MAN ALIVE TODAY FROM THE PRESIDENT'S INNER CIRCLE ON THE EVACUATION TESTIFIED THAT U.S. INTELLIGENCE WAS THE REASON THAT ROOSEVELT SIGNED THE EVACUATION ORDER.

SOME FORTY YEARS LATER A CONGRESSIONAL COMMISSION WAS

APPOINTED TO INVESTIGATE THE CIRCUMSTANCES SURROUNDING THE SIGNING OF E.O. 9066. SINCE THE EXECUTIVE ORDER'S STATED PURPOSE WAS TO PROTECT AGAINST ESPIONAGE AND SABOTAGE, ONE WOULD SUPPOSE THAT THE REPORT OF THE CONGRESSIONAL COMMISSION WOULD BE FILLED WITH ALL THE PERTINENT INTELLIGENCE ON THIS SUBJECT. BUT IT IS NOT.

INSTEAD, THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS (CWRIC), IN ITS FINAL REPORT PERSONAL JUSTICE DENIED, HAS PRODUCED A MISHMASH OF MISINFORMATION. IT TURNS OUT THAT THE COMMISSION DIDN'T EVEN KNOW WHAT CONSTITUTED THE INTELLIGENCE COMMUNITY, LET ALONE WHAT IT WAS PRODUCING. CONSEQUENTLY, THE COMMISSION HAS MISREPRESENTED THE PREVAILING INTELLIGENCE OPINION AT THE TIME, AND WAS UNAWARE OF THE MOST IMPORTANT INTELLIGENCE AVAILABLE TO THE UNITED STATES ON THE SUBJECT WHICH IT WAS CHARGED TO INVESTIGATE.

OBLIVIOUS TO PRACTICALLY ALL THE INTELLIGENCE FLOWING TO TOP LEVEL DECISION MAKERS, THE COMMISSION SAYS IN ITS REPORT THAT THERE WAS NO KNOWLEDGE OR EVIDENCE OF ORGANIZED OR INDIVIDUAL NISEI SPYING (P.60 PJD), AND THAT THE GOVERNMENT HAS CONCEDED AT EVERY POINT THAT THERE WAS NO EVIDENCE OF ACTUAL ESPIONAGE AMONG PEOPLE OF JAPANESE DESCENT ON THE WEST COAST IN FEBRUARY, 1942. (P. 50 PJD) THESE ASTOUNDING CONCLUSIONS THAT THERE WAS NO EVIDENCE OF ESPIONAGE WERE MADE WITH TOTAL DISREGARD OR IGNORANCE OF THE FACTS.

THE COMMISSION HAVING THUS CONCLUDED THAT THERE WERE NO SECURITY PROBLEMS, LITTLE TO FEAR FROM SABOTAGE, AND THAT THE U.S. INTELLIGENCE COMMUNITY FELT THE SITUATION WAS WELL UNDER CONTROL, TRIUMPHANTLY PROCLAIMED THAT PRESIDENT ROOSEVELT AND HIS TOP

PEOPLE WERE ALL RACISTS, POLITICAL OPPORTUNISTS, AND HYSTERICAL.

THIS WHAT S-1009 IS ASKING YOU TO BUY.

I CAN WELL UNDERSTAND THE DESIRES OF TODAY'S JAPANESE AMERICANS FOR VINDICATION. CERTAINLY THE OVERWHELMING MAJORITY OF JAPANESE RESIDENTS WERE EVENTUALLY PROVED TO BE ABSOLUTELY LOYAL TO THE U.S. BUT AT THE TIME NO ONE KNEW FOR CERTAIN. MOREOVER, THE EVIDENCE IN 1942 WAS HEAVILY WEIGHTED AGAINST THEM. THE UNITED STATES GOVERNMENT AND ITS PRESIDENT ACTED ON WHAT THEY BELIEVED TO BE VALID INTELLIGENCE. AND THEY ACTED IN GOOD FAITH.

MR. CHAIRMAN I WOULD LIKE NOW TO EXAMINE IN MORE DETAIL THE INTELLIGENCE WHICH THE COMMISSION "OVERLOOKED" IN ITS REPORT TO THE CONGRESS. FIRST I WOULD LIKE TO DISCUSS THE BROKEN CODES.

MAGIC

THE COMMISSION'S REPORT WAS WRITTEN WITHOUT ANY KNOWLEDGE WHATSOEVER ABOUT MAGIC ALTHOUGH IT WAS BY FAR THE MOST IMPORTANT INTELLIGENCE THE U.S. HAD RESPECTING JAPAN'S ACTIVITIES.

BY LATE 1940 IN ONE OF THE MOST REMARKABLE ACHIEVEMENTS OF WORLD WAR II, U.S. CRYPTANALYSTS HAD SUCCEEDED IN BREAKING ALL OF JAPAN'S WORLD-WIDE SYSTEM OF DIPLOMATIC CODES AND CIPHERS. FROM THAT POINT ON UNTIL THE END OF THE WAR WE EXPLOITED THESE COMMUNICATIONS. THIS OPERATION WAS GIVEN THE COVER NAME MAGIC. THE INFORMATION PASSED ON THESE COMMUNICATIONS WAS DIPLOMATIC, MILITARY, AND ESPIONAGE. MAGIC WAS CONSIDERED SO SECRET AND SO IMPORTANT THAT THROUGHOUT MOST OF 1941 THE FULL STORY WAS KNOWN TO

ONLY A HANDFUL OF KEY DECISION MAKERS, ALTHOUGH, OF COURSE, THE INTELLIGENCE IN THE MESSAGES WAS PASSED ON TO THE FIELD IN A "SANITIZED" FORM.

JAPANESE ARMY AND NAVY SYSTEMS WERE ALSO BROKEN AND EXPLOITED DURING THE WAR, BUT MAGIC CONTINUED TO BE HANDLED AT THE WASHINGTON LEVEL AS A SPECIAL AND DISTINCT ACTIVITY.

ESPIONAGE DATA RELATED TO THE WEST COAST BEGAN TO APPEAR IN MAGIC COMMUNICATIONS IN JANUARY 1941 WHEN THE JAPANESE EMBASSY AND ITS CONSULATES IN THE UNITED STATES WERE INSTRUCTED TO START EMPHASIZING INTELLIGENCE ACQUISITION RATHER THAN PROPAGANDA IN ORDER TO BE "PREPARED FOR THE WORST."

FOLLOWING THIS, TOKYO ISSUED DETAILED INSTRUCTIONS TO SPY ON U.S. AIRCRAFT PLANTS AND THEIR OUTPUT, MOVEMENT OF MILITARY SUPPLIES TO ALASKA AND THE ALEUTIAN ISLANDS, SHIPPING ACTIVITY, ARMS PRODUCTION, AND ANY ARMY OR NAVAL DATA OF INTEREST. SUPPORT WAS TO BE GIVEN TO ANY GROUP OR ORGANIZATION WHICH COULD BE USED TO FOMENT DISCORD IN THE UNITED STATES. AMONG THOSE MENTIONED WERE THE NEGRO MOVEMENT, LABOR UNIONS, THE COMMUNIST PARTY AND ANTI-SEMETIC ORGANIZATIONS. ALTERATIONS TO AIRPORTS WERE TO BE REPORTED. ANY STRENGTHENING OF THE DEFENSES OF THE PACIFIC COAST WAS TO BE NOTED. INFORMATION ON MERCHANT VESSELS SUCH AS ANY DEVIATIONS FROM REGULAR SCHEDULES, ANY REMODELING OF THE SHIPS, OR ANY SPECIAL REQUISITIONS BY THE U.S. GOVERNMENT WERE TO BE REPORTED. THE MOVEMENT OF TROOPS, AND THE NUMBER OF PEOPLE GRADUATING FROM AVIATION SCHOOLS WAS WANTED.

TO ASSIST IN THIS MASSIVE INFORMATION GATHERING PROJECT, AGENTS WERE TO BE RECRUITED. THE AGENTS WERE TO INCLUDE RESIDENT JAPANESE NATIONALS AND AMERICAN CITIZENS OF JAPANESE ANCESTRY. IN RECRUITING JAPANESE SECOND-GENERATION AND RESIDENT NATIONALS, TOKYO WARNED THEIR DIPLOMATIC POSTS TO USE THE UTMOST CAUTION, LEST "OUR PEOPLE IN THE U.S." BE SUBJECT TO PERSECUTION.

IN APRIL 1941 TOKYO REQUESTED A STATUS REPORT. IN MAY THE U.S. INTERCEPTED THE ANSWERS OF THE CONSULATES IN SEATTLE AND LOS ANGELES. THE OTHER CONSULATES' REPLIES WERE NOT INTERCEPTED, EITHER BECAUSE WE SIMPLY MISSED THEM ON THE AIRWAVES OR, MORE LIKELY, BECAUSE THEY WERE SENT BY DIPLOMATIC POUCH WHICH WAS THE NORMAL WAY TO SEND ESPIONAGE INFORMATION UNLESS TIME WAS OF THE ESSENCE. IN ANY EVENT, IT IS FAIR TO ASSUME THAT THE OTHER WEST COAST CONSULATES REPORTED SIMILAR INFORMATION.

THESE MESSAGES FROM SEATTLE AND LOS ANGELES ARE THE ONES THE APOLOGISTS FOR THE COMMISSION SAY EXPRESS ONLY HOPES AND PLANS, NOTHING MORE. LIKE MOST STATUS REPORTS THEY DO TALK ABOUT PLANS FOR THE FUTURE, BUT ALSO, LIKE MOST STATUS REPORTS, THEY ALSO TALK ABOUT ACCOMPLISHMENTS AND THE CURRENT SITUATION. "WE HAVE ALREADY ESTABLISHED CONTACTS WITH ABSOLUTELY RELIABLE JAPANESE IN THE SAN PEDRO AND SAN DIEGO AREA WHO WILL KEEP CLOSE WATCH ON ALL SHIPMENTS OF AIRPLANES AND OTHER WAR MATERIALS AND REPORT THE AMOUNTS AND DESTINATIONS OF SUCH SHIPMENTS. THE SAME STEPS HAVE BEEN TAKEN WITH REGARD TO TRAFFIC ACROSS THE U.S.-MEXICAN BORDER....WE SHALL MAINTAIN CONNECTION WITH OUR SECOND GENERATIONS WHO ARE AT PRESENT IN THE U.S. ARMY, TO KEEP US INFORMED OF VARIOUS DEVELOPMENTS IN THE ARMY...WE ALSO HAVE CONNECTIONS WITH OUR SECOND GENERATIONS WORKING IN AIRPLANE PLANTS FOR INTELLIGENCE PURPOSES...WE ARE HAVING NAKAZAWA [A JAPANESE RESIDENT]

INVESTIGATE... WE ARE HAVING INVESTIGATIONS MADE BY...WE HAVE ALREADY ESTABLISHED CONNECTIONS... MEN ARE [BEING] SENT OUT INTO THE FIELD [TO GATHER INTELLIGENCE ON THE BREMERTON NAVAL YARD]. WE ARE SECURING INTELLIGENCES...WE HAVE ...WE ARE MAKING USE OF," AND SO ON, ITEM AFTER ITEM IN THE PRESENT OR PAST TENSE.

DURING THE REMAINDER OF THE YEAR MESSAGES WERE INTERCEPTED DISCUSSING HOW TO GET INFORMATION OUT OF THE COUNTRY IN CASE OF WAR. THERE WERE ORGANIZATIONAL MESSAGES, REPORTS ON WORKING WITH DISSIDENT GROUPS, AND SCORES OF MESSAGES GOING BACK TO TOKYO WITH U.S. NATIONAL DEFENSE INFORMATION, SHIP AND AIRPLANE MOVEMENTS, MILITARY INFORMATION, AIRPLANE PRODUCTION, AND OTHER DATA. THE GREAT BULK OF INTELLIGENCE, HOWEVER, PROBABLY CONTINUED TO MOVE BY DIPLOMATIC POUCH. NONETHELESS, ENOUGH MESSAGES WERE INTERCEPTED TO GIVE THE U.S. A GOOD IDEA OF THE SCOPE, NATURE, AND SUCCESS OF THE JAPANESE PROGRAM.

AFTER PEARL HARBOR THERE WERE NO LONGER ANY OFFICIAL COMMUNICATIONS BETWEEN TOKYO AND ITS REPRESENTATIVES IN THE U.S. SO THAT PART OF MAGIC CEASED. MAGIC DID, HOWEVER, REVEAL JAPAN'S EFFORTS TO REGROUP IN SOUTH AMERICA, AND PROVIDED DETAILS ON HOW THE SPANISH GOVERNMENT TRIED TO PERFORM ESPIONAGE IN THE U.S. FOR JAPAN. BUT, AS THEY SAY, THAT'S ANOTHER STORY.

BY FAR THE MOST EXHAUSTIVE STUDY EVER MADE OF THE JAPANESE ATTACK ON PEARL HARBOR WAS DONE BY A JOINT CONGRESSIONAL COMMITTEE. IT LABORED FOR TEN MONTHS. ITS HEARINGS COMPRISE 39 VOLUMES. PRESIDENT TRUMAN DECLASSIFIED PERTINENT MAGIC FOR THE COMMITTEE SO THAT IT WOULD HAVE THE FULL STORY.

THE COMMITTEE CALLED MAGIC SOME OF THE FINEST INTELLIGENCE IN OUR HISTORY (P.253 PHR) AND STATED, "WITH EXTRAORDINARY SKILL, ZEAL AND WATCHFULNESS THE INTELLIGENCE SERVICES OF THE ARMY SIGNAL CORPS AND THE NAVY OFFICE OF COMMUNICATIONS BROKE JAPANESE CODES AND INTERCEPTED MESSAGES BETWEEN THE JAPANESE GOVERNMENT AND ITS SPIES AND AGENTS AND AMBASSADORS IN ALL PARTS OF THE WORLD AND SUPPLIED THE HIGH AUTHORITIES IN WASHINGTON WITH RELIABLE SECRET INFORMATION RESPECTING JAPANESE DESIGNS, DECISIONS AND OPERATIONS AT HOME, IN THE UNITED STATES, AND IN OTHER COUNTRIES." (P.514 PHR)

AND THROUGH MAGIC "...WASHINGTON AUTHORITIES LEARNED THAT JAPANESE SPIES AND AGENTS, DIRECTED BY THE JAPANESE GOVERNMENT, WERE COLLECTING AND TRANSMITTING TO TOKYO AN IMMENSE AMOUNT OF EXACT AND DETAILED INFORMATION RESPECTING MILITARY AND NAVAL INSTALLATIONS ..." (P.525 PHR)

INTELLIGENCE REPORTS

DOVETAILING WITH ALL THE INTELLIGENCE DATA FROM MAGIC WAS AN EQUALLY ALARMING SERIES OF CONCLUSIONS AND ESTIMATES FROM THE U.S. INTELLIGENCE COMMUNITY. NOT A SINGLE ONE OF THE FOLLOWING OFFICIAL INTELLIGENCE REPORTS WERE CITED, LET ALONE DISCUSSED, IN THE COMMISSION'S REPORT:

1) AN OFFICE OF NAVAL INTELLIGENCE 4 DEC. 1941 WRAP-UP OF JAPANESE INTELLIGENCE IN THE U.S. DURING 1941 CONCLUDED THAT AN INTELLIGENCE MACHINE "GEARED FOR WAR" HAD BEEN PUT INTO OPERATION UTILIZING BOTH ALIEN AND SECOND-GENERATION JAPANESE-AMERICANS.

2) AN ONI REPORT OF 24 DEC. 1941 STATED "ALTHOUGH HANDICAPPED BY THE DETENTION OF MANY OF ITS KEY INDIVIDUALS [THE FBI SWEEP OF SUSPECTS IMMEDIATELY AFTER PEARL HARBOR] THE JAPANESE INTELLIGENCE NETWORK IN THIS HEMISPHERE CONTINUES IN OPERATION."

3) AN ONI REPORT OF 7 FEB. 1942 WHICH STATED THAT THE CONTINUED PRESENCE OF JAPANESE RESIDENTS ON TERMINAL ISLAND, NEAR LOS ANGELES, WAS A HAZARD TO U.S. SECURITY BECAUSE OF CONTINUING ESPIONAGE ACTIVITIES AND THAT SABOTAGE AND FIFTH COLUMN ACTIVITY WERE BOTH POSSIBILITIES. (THIS REPORT WAS WRITTEN BY LT. CMDR. RINGLE WHO THE COMMISSION QUOTES OUT OF CONTEXT TO SUPPORT ITS CLAIMS THAT THERE WAS NO PROBLEM ABOUT JAPANESE SPYING, AND THAT THIS WAS THE POSITION OF ONI. NEITHER, OF COURSE, IS TRUE).

4) A PERSONAL ASSESSMENT (NOT AN OFFICIAL ONI REPORT) DATED 26 JAN. 1942 FROM LT. CMDR. RINGLE TO ADMIRAL STARK, CHIEF OF NAVAL OPERATIONS, WHEREIN RINGLE ESTIMATES THAT 25 PERCENT OF ALL JAPANESE-AMERICANS ARE OF DOUBTFUL LOYALTY, THAT ABOUT 3,500 JAPANESE RESIDENTS CAN BE EXPECTED TO ACT AS AGENTS AND SABOTEURS, AND THAT SEVERAL THOUSAND JAPANESE-AMERICANS WHO HAD BEEN EDUCATED IN JAPAN SHOULD BE IMMEDIATELY PLACED IN CUSTODIAL DETENTION "IN SPITE OF THEIR LEGAL CITIZENSHIP AND THE PROTECTION AFFORDED THEM BY THE BILL OF RIGHTS". (AGAIN THIS IS THE MAN WHO THE CWRIC SAYS WAS THE MOST KNOWLEDGEABLE MAN IN THE U.S. ON THE JAPANESE SITUATION ON THE WEST COAST IN 1942 AND WHO THEY QUOTE IN A HIGHLY SELECTIVE MANNER TO SUPPORT THEIR CONTENTION THAT THERE WAS NO EVIDENCE OF JAPANESE ESPIONAGE OR CAUSE FOR CONCERN).

5) ON 26 JAN. 1942 ONI REPORTED THAT TWO JAPANESE AMERICANS HELPED A JAPANESE PILOT, SHOT DOWN DURING THE PEARL

HARBOR ATTACK, TAKE OVER THE SMALL HAWAIIAN ISLAND OF NIIHAU WHILE THEY RADIOED FOR A SUBMARINE TO PICK THEM UP. THIS LED ONI TO CONCLUDE, "JAPANESE RESIDENTS PREVIOUSLY BELIEVED LOYAL TO THE UNITED STATES MAY AID JAPAN IF FURTHER JAPANESE ATTACKS APPEAR SUCCESSFUL."

6) A G-2 ARMY INTELLIGENCE REPORT OF 3 JAN. 1942 REVEALED: "A WIDESPREAD DECENTRALIZED SYSTEM OF JAPANESE 'CLUBS', LABOR ORGANIZATIONS, AND LEGITIMATE BUSINESS GROUPS HAS BEEN CONVERTED INTO AN IMPORTANT UNIT OF THE CENTRAL JAPANESE INTELLIGENCE NETWORK. THERE CAN BE NO DOUBT THAT MOST OF THE LEADERS HAVE BEEN AND CONTINUE TO FUNCTION AS KEY OPERATIVES FOR THE JAPANESE GOVERNMENT ALONG THE WEST COAST."

7) A G-2 ARMY INTELLIGENCE REPORT OF 21 JAN. 1942 CONCLUDED THAT THE JAPANESE GOVERNMENT'S "ESPIONAGE NET CONTAINING JAPANESE ALIENS, FIRST- AND SECOND- GENERATION JAPANESE, AND OTHER NATIONALS IS NOW THOROUGHLY ORGANIZED AND WORKING UNDERGROUND." THIS REPORT WAS SENT BY GENERAL MARK CLARK TO JOHN McCLOY AS AN EXAMPLE OF THE CURRENT SITUATION ON THE WEST COAST.

8) A NUMBER OF FBI REPORTS WERE PUBLISHED DURING 1941 INCORPORATING MAGIC WITH FBI INTELLIGENCE. OFFICIALLY, THE FBI WASN'T ON DISTRIBUTION FOR MAGIC IN 1941 BUT ONI KEPT THEM SUPPLIED WITH THE INTELLIGENCE IN THE MESSAGES. BY PARAPHRASING THE MESSAGES AND CONCEALING THE SOURCE MAGIC COULD THUS BE SANITIZED AND SENT FORWARD. FBI REPORTS WERE CONSISTENT WITH MAGIC. FOR EXAMPLE, A 27 JUNE 1941 REPORT SENT BY J. EDGAR HOOVER TO THE WHITE HOUSE POINTED OUT: "THE INFLUENCE OF THE JAPANESE

CONSUL IN PORTLAND IS SAID TO REACH INTO EVERY JAPANESE ORGANIZATION IN OREGON. THIS INCLUDES YOUTH GROUPS, SPORT CLUBS, LANGUAGE SCHOOLS, NATIONALISTIC ORGANIZATIONS, AND VARIOUS JAPANESE SOCIETIES. THESE GROUPS HAVE BEEN USED IN THE PAST FOR THE DISSEMINATION OF PROPAGANDA AND FOR OBTAINING INTELLIGENCE INFORMATION." SIMILAR REPORTS WERE FILED ON OTHER JAPANESE CONSULATES.

NONE OF THESE OFFICIAL REPORTS WERE DISCOVERED BY THE COMMISSION. OTHERWISE SUCH CONCLUSIONS AS THE FOLLOWING COULD NOT HAVE BEEN WRITTEN: "WHATEVER ITS INTELLIGENCE OFFICERS THOUGHT, THE NAVY WAS INTENT ON MOVING ETHNIC JAPANESE AWAY FROM ITS INSTALLATIONS AT TERMINAL ISLAND NEAR LOS ANGELES...STRONGER POLITICAL FORCES OUTSIDE THE INTELLIGENCE SERVICES WANTED EVACUATION. INTELLIGENCE OPINIONS WERE DISREGARDED OR DROWNED OUT" (P.60 PJD)

DIAMETRICALLY OPPOSED TO THIS CONCLUSION IS A FOUR PAGE ONI REPORT WRITTEN BY LT. CMDR. RINGLE TITLED "JAPANESE MENACE ON TERMINAL ISLAND, SAN PEDRO, CALIFORNIA", DATED 7 FEB. 1942, TWELVE DAYS BEFORE THE EVACUATION ORDER WAS SIGNED. ALTHOUGH NOT CLEARED FOR MAGIC, RINGLE'S FINDINGS PARALLELED WHAT MAGIC WAS REVEALING.

RINGLE WROTE: "IT IS EVIDENT THAT OBSERVATION AND ESPIONAGE HAS BEEN GOING FORWARD FOR A GREAT MANY YEARS. THEREFORE, IT IS EVIDENT THAT THE PHYSICAL LOCATION OF ALL FIXED DEFENSE WORKS AND HARBOR IMPROVEMENTS AND THE LIKE ARE ALREADY KNOWN TO THE JAPANESE. INSTALLATIONS WOULD INCLUDE SUCH ITEMS AS THE EXACT LOCATION OF REEVES FIELD, NAVAL OPERATING BASE, FORT MACARTHUR, OIL, GAS, AND POWER LINES, TANK FARMS, MARINE LOADING TERMINALS, IMPORTANT DOCKS, OIL REFINERIES, SHIPBUILDING INSTALLATIONS, RAILWAY LINES AND BRIDGES, ANTI-SUBMARINE NETS AND BUOYS, HARBOR APPROACHES, AIDS TO NAVIGATION, AND THE LIKE...AS LONG AS THIS COLONY, WHICH CONTAINS KNOWN ALIEN SYMPATHIZERS, EVEN THOUGH OF AMERICAN CITIZENSHIP, IS ALLOWED TO EXIST IN THE HEART OF EVERY ACTIVITY IN THE LOS ANGELES HARBOR, IT MUST BE ASSUMED THAT ITEMS SUCH AS ABOVE ARE KNOWN, OBSERVED, AND TRANSMITTED TO THE ENEMY QUICKLY AND EASILY."

RINGLE THEN GOES ON TO DISCUSS HOW SABOTAGE AND FIFTH COLUMN ACTIVITIES ARE POSSIBILITIES ON TERMINAL ISLAND.

IT IS DIFFICULT TO IMAGINE HOW THE COMMISSION'S LARGE STAFF COULD HAVE SPENT MORE THAN TWO YEARS RESEARCHING AND WRITING THIS ISSUE AND THEN TAKE POSITIONS, AS ON TERMINAL ISLAND, WHICH ARE ABSOLUTELY CONTRARY TO INFORMATION PUT OUT BY ITS OWN WITNESSES.

MISTER CHAIRMAN, MY PURPOSE HERE TODAY IS NOT TO TRY AND PROVE DISLOYALTY BY JAPANESE PEOPLE ON THE WEST COAST IN 1942. NOR AM I TRYING TO ESTABLISH SOME KIND OF AN EVIDENTIAL TRAIL. MY PURPOSE IS TO SUPPLY YOUR SUBCOMMITTEE WITH THE INTELLIGENCE WHICH THE PRESIDENT AND HIS KEY ADVISERS HAD BEFORE THEM WHEN THE DECISION ON E.O 9066 WAS MADE, INFORMATION WHICH WAS NOT PROVIDED BY THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS.

IT IS NOT TRUE THAT THE U.S. GOVERNMENT ACTED WITHOUT REASON OR CAUSE. PRESIDENT ROOSEVELT AND HIS KEY ADVISERS WERE NOT MOTIVATED SOLELY BY RACISM AND POLITICAL OPPORTUNISM, AND WITHOUT EVIDENCE AS CHARGED. BASED ON AVAILABLE INTELLIGENCE THE

PRESIDENT HAD LEGITIMATE CAUSE FOR CONCERN ABOUT THE LOYALTIES AND ACTIONS OF LARGE NUMBERS OF RESIDENT JAPANESE ON THE WEST COAST OF THE UNITED STATES IN FEBRUARY 1942. OUR GOVERNMENT HAD OVERWHELMING EVIDENCE THAT THERE WAS A MAJOR SECURITY PROBLEM ON THE WEST COAST AT A TIME WHEN THE ENTIRE COAST WAS VULNERABLE TO AN ATTACK BY THE ARMED FORCES OF THE JAPANESE EMPIRE.

THE AMERICAN PEOPLE ARE ENTITLED TO A FAIR ASSESSMENT OF WHAT INFORMATION THE U.S. GOVERNMENT HAD AVAILABLE TO IT, AND ALL THE MOVING FORCES BEHIND THE EVACUATION DECISION WHICH BROUGHT ABOUT THIS GREAT AMERICAN TRAGEDY. INSTEAD, THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS HAS PROVIDED A ONE-SIDED REPORT, FILLED WITH ERRORS, MISCONCEPTIONS, AND FALSE CONCLUSIONS. AS A HISTORICAL DOCUMENT RELATING TO THE INTELLIGENCE BACKGROUND OF EXECUTIVE ORDER 9066, IT IS WORTHLESS.

STATEMENT OF ANGUS MACBETH, FORMER SPECIAL COUNSEL TO THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

From 1981 to 1983, I served as Special Counsel to the Commission on Wartime Relocation and Internment of Civilians. It gives me great pleasure to submit this statement to the Subcommittee on Federal Services, Post Office, and Civil Service of the Committee on Governmental Affairs regarding the findings of the Commission on Wartime Relocation and the recommendations for remedies which the Commission has made to Congress. I will emphasize the remedies which the Commission recommended and the response to these recommendations in Senate Bill 1009.

The Commission was established by Congress in 1980 and directed to:

1. review the facts and circumstances surrounding Executive Order Number 9066, issued February 19, 1942, and the impact of such Executive Order on American citizens and permanent resident aliens;
2. review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including Aleut civilians, and permanent resident aliens of the Aleutian and Pribilof Islands; and
3. recommend appropriate remedies.

In fulfilling that mandate, the Commission issued an historical analysis of the promulgation of Executive Order 9066 and the events that flowed from the Order, Personal Justice Denied, which was released in February, 1983. In June of 1983, the Commission issued its recommendations for remedies.

The basic facts about the wartime treatment of Japanese Americans are undisputed. On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066. Under that Order, 120,000 people -- American citizens of Japanese ancestry and resident aliens of the immigrant generation from Japan, who were barred by law from becoming American citizens -- were prohibited from living and working on the West Coast. Almost all were later sent to "relocation centers" -- bleak barrack camps ringed by barbed wire and military guards in isolated areas of the West. Most remained in the camps until the mass exclusion was ended in December, 1944, more than two and a half years after the policy of exclusion and detention began. These events are unique in our history.

No programs of mass exclusion or detention was imposed on German or Italian aliens nor upon American citizens of German or Italian descent.

The exclusion of people of Japanese descent, both residents and citizens of the United States, from the West Coast took place at a time of high emotional tension and genuine popular fear of attack which followed the disaster at Pearl Harbor. The government justified the exclusion from the West Coast on the basis of military necessity. The first task of the Commission was, therefore, to look at the facts and consider whether military necessity justified this course of action.

The Commission carefully reviewed the extensive record of events which led to Executive Order 9066. It found no persuasive evidence of a military or security threat from the Japanese Americans which could remotely justify mass exclusion and detention. As the Commanding General on the West Coast, John L. DeWitt, conceded at the time, no sabotage had taken place. The later justifications offered by DeWitt in his Final Report on the exclusion and by the Justice Department which defended the exclusion in court also failed to demonstrate any military or security threat.

DeWitt's contention was that ethnicity determined loyalty and it was answered as early as May, 1942, by a Congressional committee which examined the impact of the Executive Order in extensive hearings on the West Coast:

> This testimony has impressed upon us in convincing fashion the fundamental fact that place of birth and technical non-citizenship alone provide no decisive criteria for assessing the alinement of loyalties in this worldwide conflict.

True of aliens, that statement can only be more powerful with regard to American citizens. Our legal system is founded on determining guilt or fault on an individual basis, and citizens must be given the presumption of loyalty. Moreover, the conclusion that ethnicity determined loyalty was not a military judgment deserving of any deference. Generals are not experts on race; their views on the political loyalties of citizens are only as good as the facts they can marshal in their support. The decision to issue the Executive Order was not based on any actual events of sabotage or espionage known to the War Department. The exclusion and detention were not justified by military necessity. They were a grave injustice to the Japanese Americans.

The other part of this history is the impact of these events on Americans of Japanese descent. The damage done by this country to its own citizens and residents is a mosaic made up of thousands of lives and thousands of personal histories. The Commission's hearing record is replete with searing and painful testimony. There was the economic loss of farms and homes sold in distress circumstances, of elderly people having to start from scratch a second time after the war, of families detained in camps without employment and unable to meet tax and mortgage and insurance payments, and of education and careers disrupted. An analysis of the economic losses suffered as a consequence of the exclusion and detention was performed for the Commission. It is estimated that, as a result of the exclusion and detention, in 1945 dollars, the ethnic Japanese lost between $108 and $164 million in income and between $41 and $206 million in property, for which no compensation was made after the war under the terms of the Japanese-American Evacuation Claims Act. Adjusting these figures to account for inflation alone, the total losses of income and property fall between $810 million and $2 billion in 1983 dollars. It has not been possible to calculate the effects upon human capital of lost education, job training and the like.

Over time and with perseverance, material losses may be repaired, but the hidden scars of lives damaged by the exclusion and detention remain. Each individual excluded from the West Coast to spend two and a half years behind barbed wire carries his own marks from that time. For people who knew their innocence and the injustice of their treatment, the burden was not light. They bore the stigma of having been branded potentially disloyal, the deprivation of liberty and the loss of the common decencies of daily life. An essential foundation of our government -- the citizen's trust that the government will deal with him individually and fairly -- was deeply damaged. The injuries inflicted by the country on these citizens were different in kind from the suffering and loss which the Second World War brought to all Americans.

No recommendations which the Commission has made, no statute that Congress may enact, can undo this history. No redress to Japanese Americans can assure that we will not repeat the errors of 1942.

I turn now to the treatment of the Aleuts. During the Second World War, the Aleutian Islands were strategically valuable to both the United States and Japan. In June, 1942, the Japanese attacked and held the two easternmost Aleutians, Kiska and Attu; only giving the islands up in the summer of 1943.

The military had anticipated a possible Japanese attack for some time before June, 1942. The question of what should be done to provide security for the Aleuts lay primarily with the civilians who reported to the Secretary of the Interior. They were unable to agree upon a course of action -- evacuation and relocation to avoid the risks of war, or leaving the Aleuts on their islands on the ground that subsistence on the islands would disrupt Aleut life less than relocation. The civilian authorities were engaged in consulting with the military and the Aleuts when the Japanese attacked.

At this point the military hurriedly stepped in and commenced evacuation. On June 3, 1942, the Japanese bombed the strategic American base at Dutch Harbor in the Aleutians; as part of the response a U.S. ship evacuated most of the island of Atka, burning the Aleut village to prevent its use by Japanese troops, and Navy planes picked up the rest of the islanders a few days later.

In anticipation of a possible attack, the Pribilof Islands were also evacuated by the Navy in early June. In early July, a number of Aleut villages from Atka eastward to Akutan were evacuated. All of the approximately 900 Aleuts were relocated to southeastern Alaska except 50 persons who were either evacuated to the Seattle area or hospitalized in the Indian Hospital at Takoma, Washington.

The Commission found that the evacuation of the Aleuts had a rational basis as a precaution to ensure their safety. The Aleuts were evacuated from an active theatre of war; indeed, 42 were taken prisoner on Attu by the Japanese. It was clearly the military's belief that evacuation of non-military personnel was advisable. The families of military personnel were evacuated first, and when Aleut communities were evacuated teachers and government employees on the islands were evacuated with them.

But the military basis for the evacuation does not justify the later treatment of the Aleuts. The Aleuts were subjected to deplorable conditions following the evacuation. Typical housing was an abandoned gold mine or fish cannery buildings which were inadequate in both accommodation and sanitation. Lack of medical care contributed to extensive disease and death.

Conditions at the Funter Bay cannery in southeastern Alaska, where 300 Aleuts were placed, provide a graphic impression of one of the worst camps. Many buildings had not been occupied for a dozen years and were used only for storage. They were inadequate, particularly for winter use. The majority of evacuees were forced to live in two dormitory-style buildings in groups of six to thirteen people in areas nine to ten feet square. Until fall, many Aleuts were forced to sleep in relays because of lack of space. The quarters were as rundown as they were cramped.

Epidemics raged throughout the Aleuts' stay in southeastern Alaska; they suffered from influenza, measles, and pneumonia along with tuberculosis. Twenty-five died at Funter Bay in 1943 alone, and it is estimated that probably ten percent of the evacuated Aleuts died during their two or three year stay in southeastern Alaska.

To these inadequate conditions was added the isolation of the camp sites, where climatic and geographic conditions were very unlike the Aleutians. No employment meant debilitating idleness.

The standard of care which the government owes to those within its care was clearly violated by this treatment, which brought great suffering and loss of life to the Aleuts.

The Aleuts were only slowly returned to their islands. The Pribilovians were able to get back to the Pribilofs by the late spring of 1944, nine months after the Japanese had been driven out of the Aleutian chain. The return to the Aleutians themselves did not take place for another year. Some of this delay may be fairly attributed to transport shortage and problems of supplying the islands with housing and food so that normal life could resume. But the government's record, especially in the Aleutians, reflects an indifference and lack of urgency that lengthened the long delay in taking the Aleuts home. Some Aleuts were not permitted to return to their homes.

When they first returned to the islands, many Aleuts were forced to camp because their former homes (those that still stood) had not yet been repaired and many were now uninhabitable. The Aleuts rebuilt their homes themselves.

They were "paid" with free groceries until their homes were repaired; food, building and repair supplies were procured locally, mostly from military surplus.

The Aleuts suffered material losses from the government's occupation of the islands for which they were never fully recompensed, in cash or in kind. Many Russian Orthodox religious objects of great significance to the Aleuts were lost and cannot be replaced. In addition, possessions such as houses, furniture, boats, and fishing gear were either never replaced or replaced by markedly inferior goods.

The Commission faced practical difficulties in deciding on appropriate remedies for the Aleuts. No effective system of records exists by which to estimate Aleut property losses exactly; certainly there is no readily available means of putting a dollar value upon the suffering and death brought to Aleuts in the camps. The Commissioners agreed that a claims procedure would not be an effective method of compensation. Therefore, the sums included in the Commission's recommendations were chosen to recognize fundamental justice as the Commissioners perceived it on the basis of the testimony and evidence before them. The recommended amounts do not reflect a precise balancing of actual losses; this is now, after many years, a practical impossibility. The Commission made the following recommendations with regard to the Aleuts:

1. The Commissioners, with Congressman Lungren dissenting, recommended that Congress establish a fund for the beneficial use of the Aleuts in the amount of $5 million. The principal and interest of the fund should be spent for community and individual purposes that would be compensatory for the losses and injuries Aleuts suffered as a result of the evacuation. These injuries, as described in Personal Justice Denied, include lasting disruption of traditional Aleut means of subsistence and, with it, the weakening of their cultural tradition. The Commissioners therefore considered that it would be entirely appropriate to make expenditures from the proposed fund for community, educational, cultural or historical rebuilding in addition to medical or social services. This recommendation was adopted by section 306(b) of S. 1009.

2. The Commissioners, with Congressman Lungren dissenting, recommended that Congress appropriate funds and direct a payment of $5,000 per capita to each of the few hundred surviving Aleuts who were evacuated from the Aleutian or Pribilof Islands by the federal government during World War II. Section 307 of S. 1009 accepts the recommendation and proposes a $12,000 per capita payment.

3. The Commission recommended that Congress appropriate funds and direct the relevant government agency to rebuild and restore the churches damaged or destroyed in the Aleutian Islands in the course of World War II; preference in employment should be given to Aleuts in performing the work of rebuilding and restoring these buildings, which were community centers as well as houses of worship. Section 306(c) meets this recommendation.

4. The Commission recommended that Congress appropriate adequate funds through the public works budget for the Army Corps of Engineers to clear away the debris that remains from World War II in and around populated areas of the Aleutian Islands. Section 308 is a comprehensive response to this recommendation.

5. The Commission recommended that Congress declare Attu to be native land and that Attu be conveyed to the Aleuts through their native corporation upon condition that the native corporation is able to negotiate an agreement with the Coast Guard which will allow that service to continue essential functions on the island. Since 1983 interest in the use of Attu as a wildlife refuge has grown and the Senate bill accommodates this interest while recognizing the interest of the Aleuts in the island.

I return now to the Japanese Americans and, particularly, to a discussion of the recommendations for relief which the Commission made.

With regard to the American citizen and residents of Japanese descent, the Commission made five recommendations which I will discuss in turn.

1. The Commission recommended that Congress pass a joint resolution, to be signed by the President, which recognizes that a grave injustice was done and offers the apologies of the nation for the acts of exclusion, removal and detention.

A free act of apology to those who were unjustly excluded and detained during the war is an important act of national healing. If we are unwilling as a nation to apologize for these events, we will deliver a message to thousands of loyal Americans who were held in the camps that will be bitter indeed. We would be affirming after forty years that the American values of due process and equality before the law without regard to ethnicity or race are only rhetorical values, and that, in times of stress, small minorities should harbor no hope that those principles will protect them from the fear and anger of their neighbors or the heavy hand of their government. Such a result would threaten the liberty of all Americans. Title I of S. 1009 wisely recognizes the need for this apology.

2. The Commission recommended that the President pardon those who were convicted of violating the statutes imposing a curfew on American citizens on the basis of their ethnicity and requiring the ethnic Japanese to leave designated areas of the West Coast or to report to assembly centers. The Commission further recommended that the Department of Justice review other wartime convictions of the ethnic Japanese and recommend to the President that he pardon those whose offenses were grounded in a refusal to accept treatment that discriminated among citizens on the basis of race or ethnicity. Both recommendations were made without prejudice to cases currently before the courts. Section 202 meets these recommendations.

This recommendation was made because the Commissioners concluded that there was no sound basis for the exclusion and detention which had been carried out on the basis of race and ethnicity and, equally importantly, imposing the severe deprivations of criminal convictions because of race or ethnicity is contrary to the most fundamental American values.

A major step consistent with this recommendation was taken many years ago. In 1947, President Truman pardoned the 263 Japanese Americans who were convicted of resisting the draft in 1944 and who contended that their refusal to be inducted was an attempt to clarify their citizenship status. In the *coram nobis* cases that have gone forward since the Commission issued its recommendations, the courts have shown their willingness to review the wartime convictions on the basis of the full record as it is now known.

In April, the Solicitor General arguing the *Hohri* case before the Supreme Court characterized the exclusion and detention as deplorable and indicated that the wartime Japanese American cases had been wrongly decided.

There remains a small group of federal wartime convictions of Japanese Americans, probably no more than 25, to whom this recommendation would apply. The cases of Lincoln Kanai and Richard Doi, described in *Personal Justice Denied* (pp. 115, 390), probably fall within this group. Since the Commission was studying federal actions, the recommendation applies to federal convictions.

The recommendation is supported by both fundamental justice and the interests of equal treatment between those already pardoned or successful on *coram nobis* petitions and the small remaining group, which is similarly situated as to the ethnic and racial elements which led to and supported their convictions.

3. The Commission recommended that Congress direct the Executive agencies to which Japanese Americans may apply for the restitution of positions, status or entitlements lost in whole or in part because of acts or events between December, 1941 and 1945, to review such applications with liberality, giving full consideration to the historical findings of the Commission. For example, the responsible divisions of the Department of Defense should be instructed to review cases of less than honorable discharge of Japanese Americans from the armed services during World War II over which disputes remain, and the Secretary of Health and Human Services should be directed to instruct the Commissioner of Social Security to review any remaining complaints of inequity in entitlements due to the wartime detention. Section 203 of S. 1009 accepts this recommendation.

In the course of its life, the Commission received a number of reports from individuals who contended, particularly with regard to the failure to obtain honorable discharges and reinstatement of social security entitlements, that they had received less from the government than was their due and that the reason for this was directly linked to the exclusion and detention with its underlying bias against Japanese Americans. The Commission was not equipped to review such claims and did not have the power to grant relief if it had undertaken such review. As a result, the Commission made this third recommendation. This is not a recommendation for a wholly new remedy but, rather, that in reviewing such claims, the Executive Branch weigh the evidence in light of the Commission's findings, so that no status or entitlement is denied a person because of the actions which the government took under Executive Order 9066.

I will address the Commission's final two recommendations together. Fourth, the Commission recommended that Congress demonstrate official recognition of the injustice done to American citizens of Japanese ancestry and Japanese resident aliens during the Second World War, and that it recognize the nation's need to make redress for these events by appropriating monies to establish a special foundation.

The Commissioners all believed a fund for educational and humanitarian purposes related to the wartime events is appropriate, and all agreed that such a fund appropriately addresses an injustice to an entire ethnic group, as distinguished from individual deprivations. Section 204 establishes the Civil Liberties Public Education Fund and meets this recommendation.

The Commissioners also believed such a fund should sponsor research and public educational activities so that the events which were the subject of this inquiry will be remembered, and so that the causes and circumstances of this and similar events may be illustrated and understood. A nation which is determined to remain just to its citizens must not forget its lapses. The foundation might appropriately fund comparative studies of similar civil liberties abuses or of the effect upon particular groups of racial prejudices embodied by government action in times of national stress; for example, the fund's public educational activity might include preparing and distributing the Commission's findings about these events to textbook publishers, educators and libraries. Section 206(b) meets the recommendation.

Fifth, the Commissioners, with the exception of Congressman Lungren, recommended that Congress establish a fund which will provide personal redress to those who were excluded, as well as serve the purposes set out in the fourth recommendation. Appropriations of $1.5 billion should be made to the fund over a reasonable period to be determined by Congress. This fund should be used, first, to provide one-time per capita compensatory payment of $20,000 to each of the approximately 60,000 surviving persons excluded from their places of residence pursuant to Executive Order 9066. The burden should be on the government to locate survivors without requiring any application for payment, and payments should be made to the oldest survivors first. After per capita payments, the remainder of the fund should be used for the public educational purposes discussed in the fourth recommendation, as well as for the general welfare of the Japanese American community. This should be accomplished by grants for purposes such as aid to the elderly and scholarships for education, weighing, where appropriate, the effect of the exclusion and detention on the descendants of those who were detained. Individual payments in compensation for loss or damage should not be made. Sections 204 and 205 of S. 1009 essentially meet this recommendation.

In addressing monetary payments, the Commission faced a number of issues which I will discuss in turn.

First, the Commission was asked to recommend appropriate remedies. Since it was dealing with extraordinary circumstances it is not surprising that the remedies recommended were not ordinary and simple remedies. Nevertheless, the Commission was interested in precedent; if analogous events had happened in the past, what action had been taken by Congress? There are no exact parallels to the exclusion and detention, but in the Indian Claims Act of 1946 the Commission found an historical analogy. Under the Indian Claims Act, Congress allowed the Indian tribes to sue the government to recover on the basis of illegal or inequitable treatment by the federal government. The Act provides an obvious parallel in providing relief for a group that was injured by government action. Over the last forty years many millions have been paid out by the Government under the terms of the Indian Claims Act.

A different sort of parallel is found in the common law and constitutional cases dealing with false arrest, false imprisonment and deprivation of liberty. These cases were particularly instructive in considering how, if at all, one can put a monetary value on the loss of liberty and they confirm what we all know -- that there is no marketplace in which freedom and liberty are traded so that there is no method by which these fundamentally spiritual values can be readily translated into dollars and cents. The judgments of juries vary widely. There is a host of elements that influence these determinations: the length of time during which liberty was lost, the degree of public humiliation involved, the violence which attended the incident, the degree to which other important aspects of the plaintiffs' life were disrupted, the pain and suffering involved. But these are signposts in a wilderness, not decisive markers that allow one to determine the compensable value of lost liberty. There is even a respectable argument that liberty and freedom inherently cannot be equated to so and so many dollars and that the attempt to do so is futile and ultimately trivalizes the importance of the values that are reduced to monetary terms.

The Commission, nevertheless, concluded that the deprivation of liberty suffered by Japanese Americans was so gravely unjust and of such long duration, leaving indelible scars behind it, that monetary compensation was not only justified but essential. The initial question when that conclusion is reached is whether there should be a claims procedure that would try to set compensation on a personalized basis. The Commission considered such a system at length but ultimately found it to be deeply flawed. First, we know not only from daily experience but from the operation of the Evacuation Claims Act after the war that, 45 years after Executive Order 9066 was issued, only a very small number of claimants could convincingly show through documents or witnesses exactly what their losses were. Second, a major aspect of any compensation would be for the loss of liberty and the stigma that resulted from the exclusion and detention. Recognizing that awards for losses of this sort inevitably have an arbitrary aspect to them, there appeared to be little merit in requiring 60,000 people to be individually put to the proof of what the effect of the exclusion and detention had been on their lives. Third, a claims process would be very time-consuming. We are now at a point where the evacuees are all over forty years old and a great many are in their 70s and 80s. It does not seem the appropriate time to begin the inevitably lengthy process of adjudicating claims. Finally, any claims process would automatically be adversarial in nature; this would result in the government's attorneys working to keep awards low by opposing Japanese American claims and contesting the nature of the hardships and the pain and suffering experienced. This would reopen the wartime wounds and work directly against the spirit of healing and magnanimity which a compensatory award should foster. Ultimately, a claims procedure was not likely to be fair, equitable, speedy or conducive to healing the wartime wounds. In Section 205 the Senate bill would establish the process the Commission envisioned by providing individual payments to eligible individuals without requiring a claims procedure.

S. 1009 also provides for the extinguishment of claims against the United States ten years after the date of its enactment or upon receipt of the total amount of payments under the proposed Act. S. 1009, § 205(e). While the Commission did not explicitly address this issue, § 205(e) appears to be consistent with the Commission's intention to favor a single per capita payment over a claims process. Of course, neither Congress nor the Commission would seek to deprive individuals of relief which the Constitution guarantees them, if the courts find that such relief is available. However, insofar as § 205(e) permits eligible individuals to elect the remedy the wish to pursue for the harms they have suffered, either accepting the payment or pursuing an action in court, the extinguishment of the claim upon acceptance of the relief established by the statute is in keeping with the general approach taken by the Commission.

The Commission had to wrestle with whether monetary compensation should be made on a uniform basis to all those who would receive it and with the question of how the class of recipients should be defined. Individual compensation to the heirs and descendants of those excluded was rejected because this compensation was primarily aimed at the loss of liberty and the stigma which attended the exclusion and those were personal injuries and losses unlike the loss of tangible property. On the other hand, the Commission concluded that no distinctions should be made among those who were affected by the exclusion orders. Much has been made of these distinctions -- many of those excluded were Japanese rather than American citizens, a few thousand voluntarily left the West Coast before the exclusion orders became effective, many evacuees in their late teens or twenties were able to leave the camps to go to college or jobs in the East or into the army. Why should all these groups be treated alike? While it is undeniably true that the legal status of aliens of enemy nationality in time of war is quite different from that of American citizens, it is willful blindness to treat the Issei as if they were enemy aliens. Immigration to this country from Japan was prohibited in 1924 but Japanese nationals were also prohibited from becoming American citizens. Thus, the Issei had lived here for at least 17 years during a period of rising tensions, and, unlike German and Italian immigrants for whom citizenship procedures were accelerated at the beginning of the war or the immigrant Chinese for whom naturalized citizenship became available during the war, the Issei had no option of becoming American citizens. This was the technical non-citizenship which Congress recognized was not indicative of lack of loyalty in 1942. "Voluntary" relocation was voluntary in name only; people of Japanese descent were not leaving the West Coast in 1942 because they believed there were shining opportunities in the interior. In fact, more did not leave precisely because of the demonstrated animosity to Japanese Americans in the interior states. Finally, the Commission decided against making distinctions in compensation based on the length of detention because it recognized that any compensation voted by Congress would remain an expression of the wartime losses but would not be full compensation for the events of 1942 to 1945.

The final question for the Commission was to find an appropriate amount to propose for individual compensation. In deciding on that amount, the Commission faced, on one side, the pressure to reach a truly just result, and, on the other side, the pressure to find a workable and efficient remedy that did not trivialize the wartime events. The Commission chose a primary form of compensation which provides a set payment of $20,000 to each individual directly affected by the exclusion order. This amount is designed to provide in one action a tangible form of redress for the variety of damages and injury which the Japanese Americans suffered as a result of Executive Order 9066 and the events which followed from it. One measure of the fairness of that payment is provided by looking at the overall losses which were suffered by the Japanese Americans. The Commission had a study made by ICF, Inc., an outside consulting firm, which looked at all the available data and analyzed the range of income and property losses which the Japanese Americans suffered. Looking only to those losses of income and property which were not compensated for under the Japanese American Evacuation Claims Act after the war and adjusting the number only for inflation, the losses are in the range of $810 million to $2 billion in 1983 dollars. These numbers do not include any amount for loss of education or professional advancement -- what is called human capital -- and they include nothing for the injury to the spirit that was suffered through the years in camps. Viewed in these terms, the monetary remedy urged by the Commission may be adequate but it cannot be claimed to be excessively generous.

Ultimately, it is the principle of individual payment in an amount that is meaningful and not trivial that is important. There is no esoteric magic to the exact number chosen by the Commission but there is no doubt about the basic foundation for the recommendation: those people who were excluded and detained suffered a grave and personal injustice at the hands of the federal government. They have not been fully compensated for those losses. While those who suffered through the wartime events cannot be made whole again, monetary compensation serves as a tangible expression of the nation's regret and is a traditional and appropriate remedy.

At the time the Commission issued its recommendations, it was estimated from the actuarial tables that approximately 60,000 people survived who directly came under the terms of the exclusion orders. The figure is somewhat smaller today. Thus, the Commission recommended that approximately $1.2 billion be devoted to individual compensatory payments and the remainder be devoted to educational and humanitarian purposes. This last sum was designed to serve two functions. First, the history of the exclusion and detention is significant for all Americans and it is not a simple history. There are many lessons to be drawn from these wartime events, dealing with subjects as varied as the improper use of military power, to the influence of local ethnic prejudices on national policy, from issues of dual or divided loyalty among immigrants to the United States to the difficulties that even a democratic government faces in admitting and rectifying its most tragic mistakes. The Commission believed that this history should have a living memorial in the form of providing funds for the study of these and similar events and for the teaching and discussion of this history in schools and colleges. This is truly a case in which the best hope for our future lies in true and faithful knowledge of our past.

Finally, the Commission recommended that some part of the fund be devoted to humanitarian purposes, particularly in the Japanese American community. This is a modest part of the total fund recommended but an important part. Reading the documents of the time and listening to the personal testimony in the Commission's hearings, there can be no doubt that before Pearl Harbor the Japanese Americans on the West Coast were a closely knit community. This community was shattered by the exclusion and as a practical matter could not be wholly rebuilt after the war. Some of this change was natural and inevitable in the generational succession of an immigrant group, but, particularly for many of the older Issei, the changes were harsh and dramatic. Humanitarian support should search out those parts of the community and those individuals who have not shared in the achievements and advances which so many Japanese Americans had made in the past forty years.

I know that all the Commissioners were deeply moved by the powerful and tragic testimony which we heard and all felt strongly that Congress should act to heal the wounds left by the wartime events with both the Japanese Americans and the Aleuts. The Commission's recommendations propose the most appropriate remedies the Commission could find to carry out that act of healing.

June 15, 1987

Honorable David Pryor, Chairman
Subcommittee on Civil Service, Post
Office and Federal Service
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Pryor:

I am an American citizen, born, raised and educated in Toppenish, a small agricultural community in the Yakima Valley, State of Washington.

In June 1942, my family and all other families of Japanese ancestry were evicted from the Yakima Valley. We were put on trains and overnight arrived in North Portland, Oregon. The building in which we were housed had formerly been the International Livestock Exposition Center. The odor of the previous tenants was everywhere. In September of that year we were sent by train to Minidoka, a bleak semi-desert country in Central Idaho. The camp was surrounded by barb wire fence, guard towers, soldiers patrolling the area and armed guards at the gate. I was a prisoner of my own government. Convicted, and sent away without ever being charged of any wrong doing without trial or review . The bottom had dropped out of my world.

I remembered well that when I was a youngster in Elementary School, we use to stand beside our desk each morning and pledge allegiance to the flag of the United States of America. The ending phrase "with liberty and justice for all" had a very hollow ring.

Subsequently, like many other young men in the camps I left Minidoka to join the U.S. Army. When I returned on furlough and had to pass through the gate with armed guards, it was an odd sensation.What should have been a happy occassion was not and I left after only a few days.

In the hearings on S1009, the redress bill, I hope everyone will ask themselves a very fundemental question: "Does the Constitution of the United States apply equally to all of its citizens or only to a priviledged few,or is that decision to be made by politicians, government officials, or to be determined by the mood of the public?"

The Commission on Wartime Relocation and Internment of Civilians termed the mass exclusion, relocation and detention of persons of Japanese ancestry a grave injustice, We have waited patiently for the wheels of justice to right the wrong. Time is running out on us. It is estimated that of the 120,000 persons who were excluded from the West Coast about 60,000 survive and that number diminishes with each passing month. In my own case of a family of nine, including my parents, only five survive.

I urge your committee to approve S 1009 to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians. Approval of this bill will be a significant first step toward correcting a grievious mistake of the past in the hope a similar tragedy will never be repeated.

Thank you.

Sincerely,
Walter Sakai
Walter Sakai
2465 NW 121st Place
Portland, Oregon 97229

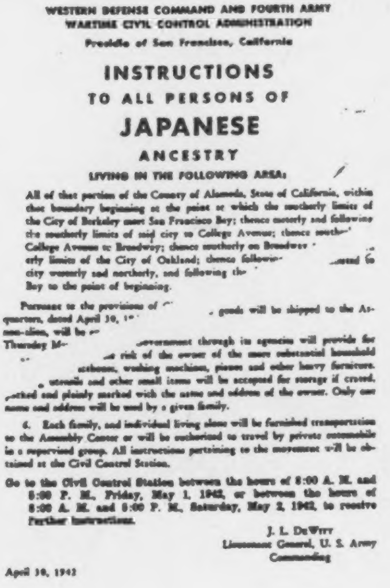
PETER B. SHERIDAN

SHOULD COMPENSATION BE GIVEN TO JAPANESE AMERICANS RELOCATED DURING WORLD WAR II?

In February 1983 the U.S. Commission on Wartime Relocation and Internment of Civilians released a report saying that the evacuation and relocation of more than 110,000 Japanese Americans was a "grave injustice" caused by "race prejudice, war hysteria and a failure of political leadership." The Commission rejected the claim of "military necessity" as a basis for the relocation and said that the evacuees suffered violations of basic civil liberties and incurred substantial losses in property as a result of the relocation. Pursuant to its findings, the Commission recommended monetary and other compensation for those who were relocated. By the end of the first session of the 98th Congress five bills had been introduced in response to the findings and recommendations of the Commission, and subcommittee hearings had been held in the Senate. During the second session additional congressional hearings are possible.

F.B.I. wasn't pursuing Jap Am.

Immediately after the Japanese attack on Pearl Harbor, December 7, 1941, the Federal Bureau of Investigation began a roundup of aliens deemed potentially dangerous as a result of prior investigation by the Bureau. Within weeks, several thousand aliens had been taken into custody, brought before an Alien Enemy Hearing Board and then released, paroled, or interned for the duration of the war. Those interned, if not considered a threat, were allowed later to apply for parole.



WESTERN DEFENSE COMMAND AND FOURTH ARMY
WARTIME CIVIL CONTROL ADMINISTRATION
Presidio of San Francisco, California

INSTRUCTIONS
TO ALL PERSONS OF
JAPANESE
ANCESTRY
LIVING IN THE FOLLOWING AREA:

All of that portion of the County of Alameda, State of California, within that boundary beginning at the point at which the southerly limits of the City of Berkeley meet San Francisco Bay; thence easterly and following the southerly limits of said city to College Avenue; thence souther- College Avenue to Broadway; thence southerly on Broadwa- erly limits of the City of Oakland; thence followi- -ound to city westerly and northerly, and following th- Bay to the point of beginning.

Pursuant to the provisions of C- goods will be shipped to the As- quarters, dated April 30, 19- non-alien, will be e- Thursday M- overnment through its agencies will provide for risk of the owner of the more substantial household tboxes, washing machines, pianos and other heavy furniture. utensils and other small items will be accepted for storage if crated, packed and plainly marked with the name and address of the owner. Only one name and address will be used by a given family.

6. Each family, and individual living alone will be furnished transportation to the Assembly Center or will be authorized to travel by private automobile in a supervised group. All instructions pertaining to the movement will be obtained at the Civil Control Station.

Go to the Civil Control Station between the hours of 8:00 A. M. and 5:00 P. M., Friday, May 1, 1942, or between the hours of 8:00 A. M. and 5:00 P. M., Saturday, May 2, 1942, to receive Further Instructions.

J. L. DeWitt
Lieutenant General, U. S. Army
Commanding

April 30, 1942

Early Japanese military and naval successes, and a belief that the American mainland would be attacked from the air or sea, and might even be invaded convinced many Americans, especially those living on the West Coast, that this somewhat selective screening process was not satisfactory. Before long, calls were heard for an evacuation of all aliens, especially the Japanese, from designated military areas.

Agitation against aliens on the West Coast continued, and in February 1942, pursuant to Executive Order 9066 and various directives of the United States military forces, more than 110,000 civilians (men, women, and children) of Japanese ancestry, including permanent resident aliens (Issei) and United States citizens (Nisei), were removed from the West Coast and placed in 10 relocation camps in remote and isolated areas of California, Arizona, Idaho, Wyoming, Colorado, Utah, and Arkansas.[1]

Only those of Japanese ancestry living along the West Coast were objects of exclusion or detention.[2] No such actions were taken against German or Italian aliens or against American citizens of German or Italian descent, even though a state of war also existed with Germany and Italy. Moreover, there was no mass detention or evacuation of the almost 158,000 individuals of Japanese ancestry living in Hawaii, where they constituted more than 35 percent of the total population.

Commission on Wartime Relocation and Internment of Civilians

In 1980, in response to requests for an investigation into the relocation and demands for reparations for those removed, Congress established a Commission on Wartime Relocation and Internment of Civilians[3] to review the facts and circumstances surrounding Executive Order 9066, to determine whether any wrong was committed against those American citizens and permanent resident aliens affected by Executive Order 9066, and to recommend appropriate remedies.

In February 1983, after two years of investigations and hearings, the Commission released a 467-page report, *Personal Justice Denied*, in which the Commission concluded that the evacuation and relocation of more than 110,000 Japanese Americans was a "grave injustice" caused by "race prejudice, war hysteria and a failure of political leadership."

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We won't take
to Owens Valley for U.
ASAHI DYE WORKS
朝日洋服

Photos from the collections of the Library of Congress

The Commission also concluded that the claim of "military necessity" as a basis for the relocation lacked substantiation because "not a single documented act of espionage, sabotage or fifth column activity was committed by an American citizen of Japanese ancestry or by a resident Japanese alien on the West Coast." The Commission further found that the evacuees suffered violations of basic civil liberties and incurred substantial losses in property as a result of the relocation.

In June 1983, the Commission recommended the following actions:

1. The passage by Congress of a joint resolution, to be signed by the President, recognizing that a grave injustice was done through the exclusion, removal, and detention of Japanese resident aliens and Japanese American citizens, and apologizing for such actions of the United States Government.
2. The pardoning by the President of those Japanese Americans convicted of violations of statutes concerned with curfew (all enemy aliens had to be in their homes between 8 p.m. and 6 a.m.), evacuation, and the relocation. The Commission also recommended the review and possible pardon of other convictions found to be based on race or ethnicity.
3. The restitution of positions, status, or entitlements lost because of exclusion and relocation.
4. The establishment by the Congress of a special foundation to fund research and education activities concerning the relocation, as well as other historical instances where particular groups may have suffered racial prejudice and abuses of civil liberties.
5. The appropriation by the Congress of $1.5 billion to establish a fund from which a one-time per capita compensatory payment of $20,000 would be made to each of the approximately 60,000 survivors of the relocation camps. Monies remaining after payment would be used for public educational activities and for the general welfare of the Japanese American community.

The Commission also recommended monetary and other compensation for those Aleuts removed and relocated during World War II. In 1942, as a result of the Japanese capture of Attu and Kiska (the two westernmost Aleutian Islands), approximately 1,000 Aleuts were evacuated from these islands by the United States military and relocated in southeastern Alaska. The Commission concluded that while the "evacuation of the Aleuts was a rational wartime measure taken to safeguard them," the Aleuts nevertheless suffered harmful consequences as a result of this action. The Commission found that 10 percent of the Aleuts died because of improper housing and inadequate medical care. Moreover, the Aleuts discovered on their return that many of their homes and churches had been damaged, looted, and destroyed, and that much hazardous wartime debris remained in the islands.

Finally, the island of Attu was never returned to the Aleuts after World War II. (At present, Attu is used by the Coast Guard.)

Opponents of compensation for the Japanese Americans argue that the relocation of the Japanese Americans was necessary and justified on the grounds of military necessity and national security. They assert that in late 1941 and early 1942, the threat of a Japanese attack and invasion along the West Coast was considered a real possibility. American military authorities were convinced that a potential danger existed in the presence of the large Japanese population in the coastal States.

Opponents also argue that the Japanese Americans have already been compensated adequately under provisions of several statutes. In 1948, for example, P.L. 80-886 authorized the Attorney General to adjudicate specified claims resulting from the evacuation of specifically identified persons of Japanese ancestry under military orders. Pursuant to the provisions of this law, these Japanese Americans received a total compensation of $38 million after filing claims for losses incurred during the relocation. More recently, legislation was enacted amending the Social Security Act to provide benefits for those interned during World War II, and to provide civil service retirement credit for time spent in World War II camps.

A further argument adduced by opponents is that the Supreme Court has upheld the constitutionality of the removal and relocation of the Japanese Americans, and thus internment was a constitutional procedure. On December 18, 1944, for example, the Supreme Court upheld the removal of the Japanese Americans as a military necessity and as a proper exercise of the war powers of the President and the Congress (*Korematsu v. United States*, 323 U.S. 214).

Finally, opponents claim that compensating one minority for alleged losses would set an undesirable precedent for similar claims by other groups.

Supporters of compensation claim that the Japanese American population on the West Coast constituted no espionage or sabotage threat, and point to statements by the FBI and the Office of Naval Intelligence (ONI) which dismissed the allegation of wholesale espionage and sabotage among the Japanese American population.[8] The Japanese American Citizens League also argues that espionage or sabotage activities would have been difficult for Japanese Americans to carry out, because much of the Japanese American population was either "too young, too old, or too visible."[9]

Furthermore, supporters of compensation question why, if military necessity is accepted as grounds for relocation, the Japanese Americans in Hawaii, much closer to Japan and the scene of hostilities, were not relocated. Advocates of compensation also point out that while the American victory of June 1942 in the battle of Midway ended any possibility of a Japanese attack on the United States mainland, relocation continued. When the exclusion orders were rescinded in December 1944, approximately 80,000 Japanese Americans remained in custody.

While it is true that the Japanese Americans received some compensation as a result of legislation enacted in 1948, supporters of additional compensation argue that legislation disallowed claims for lost income and that the amount awarded was not a full and fair compensation for actual losses because, as concluded by the Commission, "elaborate proof of loss was required, and incentives for settling claims below the full value were built into the Act." On the other hand, opponents note the 1944 Supreme Court ruling which declared the exclusion and detention to be constitutional.

Supporters of compensation argue, however, that this and similar decisions were morally and legally wrong and were based on little factual evidence. For example, in November 1983, a Federal judge in California vacated the conviction of the defendant in the 1944 *Korematsu* case for failure to obey evacuation orders, claiming that the decision of the Supreme Court was based on unsubstantiated material, distortions, and misrepresentations.

Finally, those advocating compensation contend that the removal and relocation of the Japanese Americans was a unique case in American history and cannot be compared to the experiences of other groups. The Japanese American Citizens League, for example, claims that "only in the case of the Japanese Americans was there a total abrogation of constitutional guarantees inflicted against a single group solely on the basis of race."

Congressional Action

Following the issuance of the Commission's recommendations in June, five bills were introduced concerning the issue of compensation to those Japanese Americans and Aleuts placed in camps. Two of the bills (S. 1520 and H.R. 3387) carry the same title: "World War Civil Liberties Violations Redress Act." S. 1520 provides no specified amount of compensation, leaving the figure to be determined by congressional action. H.R. 3387 provides for a payment of $20,000 to each living individual held in the camps. A hearing on S. 1520 was held on July 27, 1983, by the Subcommittee on Administrative Practices and Procedure of the Senate Judiciary Committee.

In October and November, 1983, two bills (H.R. 4110 and S. 2116) were introduced for the purpose of "accepting the findings and recommendations of the Commission on Wartime Relocation and Internment of Civilians." Both bills provide for a payment of $20,000 to each living individual held in the camps and detail other forms of compensation to the Japanese Americans and the Aleuts. A fifth bill (H.R. 4322), "Aleutian and Pribilof Islands Restitution Act," introduced on November 4, 1983, is concerned solely with compensation to the Aleuts.

No further action was taken on any of these measures during the first session of the 98th Congress. It is anticipated, however, that additional hearings will be held during the second session.

Peter B. Sheridan is an analyst in American national government, Government Division.

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[1] Issei were Japanese immigrants, ineligible under naturalization laws then in force for American citizenship. This disability was removed in 1952. Nisei were American-born children of Issei, hence American citizens. The Nisei comprised two-thirds of those relocated. Many Nisei, recruited from the camps and from Hawaii, served in the United States armed forces in World War II, most notably in military intelligence in the Pacific, and in the 100th Battalion and the 442nd Regimental Combat Team in Europe. The 442nd was one of the most decorated combat teams in World War II.

[2] As early as December 1941, enemy aliens were prohibited from residing or traveling in certain areas, i.e., excluded from such areas. Later proclamations of the military greatly extended these prohibited areas. In theory, all enemy aliens were to be so excluded. In practice, exclusion was limited to the Japanese Americans.

[3] P.L. 96-317, 94 Stat. 964.

[4] P.L. 92-603, 86 Stat. 1329; P.L. 95-382, 92 Stat. 727.

[5] J. Edgar Hoover, for example, stated that the evacuation was "based primarily upon public and political pressure rather than on factual data." The FBI did not favor mass evacuation, preferring instead the roundup of only those individual Japanese Americans deemed dangerous.

[6] Japanese American Citizens League. National Committee for Redress. Frequently Asked Questions About Redress. [Washington, 1983].

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MEMORANDUM

THE RELOCATION AND INTERNMENT OF THE ALEUT PEOPLE DURING WORLD WAR II:

A CASE IN LAW AND EQUITY FOR COMPENSATION

by

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The Aleut Corporation

Submitted to

Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

June 17, 1987

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I. THE RECOMMENDATIONS OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

The Commission on Wartime Relocation and Internment of Civilians ("CWRIC") established beyond question that the Aleut people suffered great injustice at the hands of the United States government during World War II. In adopting private relief legislation to compensate the Aleuts, Congress will be following a long line of precedents to ensure that justice is done.

Only the Congress can consent to liability for claims against the United States. Under our system of laws, there is no other authority which can waive sovereign immunity. In the case of the injustices against the Aleut people, Congress initially sought the assistance of the distinguished CWRIC in determining how to proceed. After extensive hearings, the CWRIC recommended that Congress compensate the Aleuts for their losses. This compensation would be accomplished through (1) the establishment of a trust fund; (2) direct per capita payments to those relocated during World War II; (3) the restoration of Aleut village churches destroyed during World War II; (4) the removal of military debris which still remains on Aleut lands; and (5) the conveyance of Attu Island to the Aleuts' Native Corporation.

Because of the importance of the issues, this Memorandum has been prepared to assist the Committee in evaluating the pending bills to implement the Commission's recommendations. A review of traditional private relief remedies, based upon equity and law, is appropriate to place the Aleuts' case in context and perspective.

II. THE HISTORICAL BASIS FOR CONGRESSIONAL CONSIDERATION OF THE ALEUT CLAIMS

The doctrine of sovereign immunity, that the judicial power does not extend to suit against the United States, was first introduced by Chief Justice Jay when he observed that a suit would not lie against the Government because "there is no power which the Courts can call to their aid." Chisholm v. Georgia, 2 Dall. 419, 478 (1793). Chief Justice Marshall concluded in a later case, as a matter of obiter dictum, that "no suit can be commenced or prosecuted against the United States." Cohens v. Virginia, 6 Wheat. 264, 411-412 (1821).

The doctrine was directly established in United States v. Clarke, where Chief Justice Marshall said that, as the United States is "not suable of common right, the party who institutes such suit must bring his case within the authority of some act of Congress, or the court cannot exercise jurisdiction over it." 8 Pet. 436, 444 (1834). In the case of United States v. Lee, 106 U.S. 196 (1882), the

Court examined the doctrine in depth, and confirmed Marshall's finding in Clarke that lawsuits against the United States can be brought only in the manner prescribed by Congress and subject to any limitations that Congress might impose.

As no right of action against the government existed in the courts, the Congress in the early years of the Republic directly considered all claims as private bills. The evolution toward modern claims adjudication began in the mid-nineteenth century, and the initial steps of that process are described in United States v. Klein:

> It is as much the duty of the government as of individuals to fulfill its obligations. Before the establishment of the Court of Claims claimants could only be heard in Congress. That Court was established in 1855 [10 Stat. 612] for the triple purpose of relieving Congress, and of protecting the government by regular investigation, and of benefiting the claimants by affording them a certain mode of examining and adjudicating upon their claims. It was required to hear and determine upon claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States. Originally it was a court merely in name, for its power extended only to the preparation of bills to be submitted to Congress.

13 Wall. 128, 144 (1871).

Congress authorized the Court of Claims (now, the U.S. Claims Court) to render final judgments in 1863 (12 Stat.

765), but the jurisdiction of the court remained limited, generally to the cases and controversies described in Klein above.

In contemporary practice Congress has waived sovereign immunity in a number of general laws, and has established judicial review of the claims authorized under the applicable statutes. See, e.g., the Tucker Act, 28 U.S.C. 1346(a) (1976 and Supp. 1984), based on 36 Stat. 1093, approved March 3, 1911; the Federal Tort Claims Act, 28 U.S.C. 1346, 2671-2680 (1976 and Supp. 1984), approved June 15, 1948.

Those claims against the government which Congress has authorized and permitted under general laws are often narrow in scope and subject to selected rules of the law of the place where the conduct complained of occurred. Under the Federal Tort Claims Act, for example, the United States "shall not be liable for interest prior to judgment or for punitive damages," 28 U.S.C. 2674 (1976), notwithstanding state law. Otherwise, the law of the state where the tort occurred controls, except for the application of a Federal statute of limitations. 28 U.S.C. 1346(b) (1976 and Supp. 1984).

Despite these general laws, the Congress has always reserved the privilege of considering, under special or ad hoc rules, those petitions for redress of grievances which the government has a moral obligation to resolve. Although the modern code is comprehensive, and extensive regulatory authority to settle claims has been established, the Congress continues to give special relief in circumstances that offend the conscience of a civilized society.

A. Private Relief Legislation

All claims against the United States were considered directly by Congress, as noted above, before 1855. These claims were decided upon consideration of private relief legislation, and equitable as well as legal principles were taken into account. Although most claims are resolved today under the general laws, private relief legislation continues to play an important role in unique cases involving equitable considerations which cannot be ignored.

In reporting legislation to facilitate review of private relief petitions by the Court of Claims in so-called Congressional reference cases, the Senate Committee on the Judiciary stated:

> The contention that general legislation is preferable and should be sufficient to. cover all cases attributes to the legislative branch a degree of omniscience and prescience that this committee is unwilling to claim for itself. It is impossible, particularly in legislation regulating the relationship between the government and private parties to take account of all eventualities.
>
> It should also be remembered that in the special area with which private relief

> legislation deals, factors that in other areas ameliorate the possible harsh effects of general laws may not exist.
>
> * * *
>
> In addition, in applying statutes regulating the rights and obligations of the Government the courts have less freedom to adjust their decisions to the equities of particular situations than they do in developing the common law of relationships among private parties. For all these reasons, the committee is of the opinion that private relief legislation is both useful and necessary . . . .

S. Rep. No. 1643, 89th Cong., 2d Sess. 4-5 (1966). The Congress, accordingly, will not be bound by rigid administrative or statutory guidelines in fixing remedies for claims based upon equitable considerations.

As noted in the rules of the House Subcommittee on Administrative Law and Governmental Relations, House Committee on the Judiciary:

> In connection with its jurisdiction over claims, the subcommittee considers private bills extending relief to individuals who have no other existing remedy. The right to petition for a redress of grievances is guaranteed by the Constitution. When called upon to decide whether relief should be granted persons seeking redress of grievances, the subcommittee is guided by principles of equity and justice. The task of the subcommittee is to determine whether the equities and circumstances of a case create a moral obligation on the part of the Government so that an individual merits relief.

Subcommittee Rules, Rule 5 (94th Cong.).

In the final analysis, the conscience of the American people is reflected in the acts of the Congress. Courts are limited in the relief which they can grant by the constraints of the sovereign immunity statutes. Only the Congress has power to structure a remedy where no remedy at law exists.

B. Special Statutes for General Equitable Relief

The Congress from time to time has enacted laws designed to provide general equitable relief to petitioners whose remedies cannot be found under the general statutes. One notable example was the Act of August 13, 1946, 60 Stat. 1049, which established an Indian Claims Commission to redress grievances unique to the condition of Native Americans. That Act authorized the Commission to hear and determine claims against the United States, notwithstanding any defense of laches or any statute of limitations, including claims:

> . . . which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; . . . and . . . claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity.

25 U.S.C. § 70a. The strong emphasis on fair dealings, and equitable considerations in resolving claims against the United States, was incorporated to reflect the Congressional view that government, regardless of any arbitrary statute of limitations or defense of laches, has a moral obligation to right those wrongs which, upon reflection, are unconscionable and violate an express or implied covenant with the people.

C. Special Statutes Creating Claims Tribunals

Under other circumstances where a class of persons has endured special hardships in difficult times, the Congress as a matter of equity has established tribunals to consider the claims of those persons, and fix damages in compensation or report back to Congress with findings and recommendations.

The Act of July 3, 1948, 62 Stat. 931, 50 U.S.C. App. 2001 *et seq*. (1976 and Supp. 1984), established a War Claims Commission to determine the compensation due, based upon equitable considerations, to persons who, as civilians, were captured by Imperial Japanese forces during World War II. Certain claims of religious organizations, prisoners of war, employees of contractors, and others were also adjudicated by this *ad hoc* Commission.

Under another statute, Congress established the Philippine War Damage Commission, and authorized that panel to make compensation "on account of physical loss or destruction of or damage to property in the Philippines . . . as a result of . . . enemy attack, . . . action taken by or at the request of the military, naval, or air forces of the United States to prevent such property from coming into the possession of the enemy . . . [and other perils]." 50 U.S.C. App. 1752(a) (1976).

The act authorizing the Secretary of the Navy to appoint a claims commission for residents of Guam who suffered damages during the war provides precedent for compensating the Aleuts for the unjustified destruction of their property. Congress approved compensation "when such damage, loss, or destruction is the result of or incident to noncombat activities of the United States Army, Navy, or Marine Corps forces or individual members thereof." Act of Nov. 15, 1945, Pub. L. No. 79-224, 59 Stat. 582, 50 U.S.C. App. § 2004(h) (1970) (emphasis added). Thus, as recently as 1945, Congress ordered compensation for destruction, unrelated to combat, of civilian property -- compensation of a character the Justice Department has called "unprecedented."

In fact, Congress has even more recently enacted another special remedial statute for the purpose of compensating civilians who suffered otherwise noncompensable damages to their property during World War II. The Micronesian Claims Act of 1971, Pub. L. No. 92-39, 85 Stat. 92, as amended, 50 U.S.C. App. §§2018 et seq. (Supp. II 1972) -- enacted some twenty six years after the war -- set up a fund for compensation of losses incurred by Micronesians during the war and established the Micronesian Claims Commission to administer the fund.

The House Report on the bill that became the Micronesian Claims Act explained that claims were to be paid without requiring the claimant either to prove that the United States was at fault or to state a recognized cause of action.

> By the terms of the bill, the Commission is authorized to receive, examine, adjudicate, and render final decisions respecting Micronesian claims, in accordance with the laws of the Trust Territory of the Pacific Islands and international law. Under customary international law, civilians in a war zone . . . are not entitled as a matter of law to compensation for death or physical or property damage which results from the lawful conduct of hostilities. That rule is not intended to come into play in respect to these claims, which will be governed by the agreement with Japan and by this resolution. The purpose of compensating Micronesians for wartime claims is to meet their claims whether they arose as a result of the lawful conduct of hostilities or otherwise. Hence, payments are an ex gratia contribution to the Micronesians. No Micronesian claimant could be debarred on the ground that his or her claim fails to meet the tests of customary international law. A reference in the bill to international law is useful in furnishing guidance to the Commission on the measure of damages to be applied in meeting claims. . . .

H.R. Rep. No. 226, 92d Cong., 1st Sess. 4 (May 25, 1971) (emphasis added).

The Aleuts present an even more compelling case for compensation than did the Micronesians. The pending bill, by limiting direct compensation to former internees who are still alive, is more restrictive than the Micronesian Claims Act, which permitted additional compensation to the survivors of those injured during the war. See Melong v. Micronesian Claims Commission, 569 F.2d 630 (D.C. Cir. 1977).

From a practical standpoint, as the CWRIC observed, paying the Aleuts a liquidated sum circumvents the difficult task, encountered by the Micronesian Commission, of "determining [in the 1970s] the value that [subsequently destroyed] Micronesian property had in the early 1940s." Ralpho v. Bell, 569 F.2d 607, reh'g denied, 569 F.2d 636 (D.C. Cir. 1977). Whereas the property of the Micronesians was destroyed during combat, much of the Aleuts' property was destroyed unnecessarily and maliciously or was stolen by United States troops. "It is a generally accepted principle of international law that a state is not liable for losses and damages caused by military operations against opposing forces (such as shelling and bombing), unless they resulted from wanton acts or operations which were unnecessary from a military standpoint." 8 Whiteman, Digest of International Law 825 (1967) (emphasis supplied). Thus, the Aleuts' claims, based on the undeniable culpability of government representatives, warrant compensation.

The present Commission on Wartime Relocation and Internment of Civilians was established not to fix levels of compensation for the victims of official abuse and neglect, but to find the facts, and make recommendations to Congress concerning the appropriate remedies for those victims. See Pub. L. 96-317, section 4(a)(3), 4(c), 94 Stat. at 965, 28 U.S.C. 2415 (1976 and Supp. 1984).

In the time-honored tradition of private relief legislation, Congress now has the opportunity to fashion remedies from the Commission's recommendations for those who were relocated and interned during World War II.

III. THE SPECIFIC BASES IN LAW AND EQUITY FOR COMPENSATION OF THE ALEUTS' LOSSES

A. Property Taken or Destroyed Without Compensation

The evidence demonstrates conclusively that (1) the Aleuts' personal property was left behind by military order when they were evacuated from their villages by military personnel; (2) this personal property was extensively vandalized, appropriated for official use, or taken by armed forces personnel as souvenirs; and (3) just compensation for much of this personal property was never made by the United States. The Aleuts have a claim against the United States on Constitutional grounds for full compensation for their personal property losses.

The depositions from surviving Aleuts demonstrate that the Aleut villagers were not compensated for the greater part of the personal property lost, taken, or destroyed by government agents and employees, including members of the armed forces. The Aleuts left their property, unprotected, in their homes and villages under the exigencies of the military situation. The possession, protection, and care of that property was assumed by the United States, but due care was not taken and the property was lost or destroyed beyond use.

The Fifth Amendment to the U.S. Constitution provides that "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Even assuming that the initial decision to evacuate the villages was occasioned by military necessity, the principles of law applicable under early cases and cited in later cases as of continuing validity demand, under Fifth Amendment principles, compensation for the Aleuts' losses.

One precedent that parallels the Aleuts' situation is the case of Mitchell v. Harmony, 13 How. 115 (1851). In that case, plaintiff was a trader forced to accompany a column of U.S. Army troops through hostile territory in the Mexican War. The defendant officer in charge seized plaintiff's wagons, mules, and goods. In the course of the operation plaintiff's property was destroyed. He sued the commanding officer in trespass for the value of his losses.

The Supreme Court affirmed the verdict for plaintiff, and described in the course of its opinion the limits of military power under such circumstances:

> . . . [I]t must be remembered that the question here is not as to the discretion [the military commander] may exercise in his military operations or in relation to those who are under his command. His distance from home, and the duties in which he is engaged, cannot enlarge his power over the property of a citizen, nor give to him, in that respect, any authority which he would not, under similar circumstances, possess at home. And where the owner had done nothing to forfeit his rights, every public officer is bound to respect them, whether he finds the property in a foreign or hostile country, or in his own.
>
> There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and also where a military officer, charged with a particular duty, may impress private property into the public service or take it for public use. Unquestionably, in such cases, the government is bound to make full compensation to the owner . . ..

13 How. at 134.

Under waiver of sovereign immunity procedures, the Court was not reluctant to affirm the holding in Mitchell when it considered the claim of a steamboat fleet owner whose vessels had been taken into service by military authorities in the Civil War. United States v. Russell, 13 Wall. 623 (1871). The Court in Russell held, under the facts, that officers of the United States were justified in pressing the steamboats into service on the grounds of military necessity. "Private property, the Constitution provides, shall not be taken for public use without just compensation, and it is clear that there are few safeguards ordained in the fundamental law against oppression and the exercise of arbitrary power of more ancient origin or of greater value to the citizen . . . ." 13 Wall. at 627. The Court recognized the need for extraordinary action in time of emergency:

> Extraordinary and unforeseen occasions arise, however, beyond all doubt, in cases of extreme necessity in time of war or of immediate and impending public danger, in which private property may be impressed into public service, or may be seized and appropriated to the public use, or may even be destroyed without the consent of the owner . . . . [T]he rule is well settled that the officer taking private property for such a purpose, if the emergency is fully proved, is not a trespasser, and that the government is bound to make full compensation to the owner.

13 Wall. at 627-628.

In Ramirez v. Weinberger, 745 F.2d 1500 (D.C. Cir. 1984) (en banc), cert. granted, vacated and remanded, 471 U.S. 1113 (1985), a case presenting claims strikingly similar to the Aleuts' instant claims, the court, expressly relying on Mitchell, reaffirmed the government's obligation to compensate the owners of property taken for the common good because of military necessity. Ultimately, because such claims are not amenable to disposition in the courts, fair compensation was assured through private relief legislation such as the Aleuts now seek.

The facts of this very recent case were as follows. Ramirez, a United States citizen, acquired a large tract of undeveloped jungle land in Honduras. Ramirez worked the land for twenty years, establishing a 14,000 acre cattle ranch, a meat packing operation, and a shrimp packing plant. He constructed roads, reservoirs, and homes for his 500 employees and their families.

In 1983, without official notice or permission, the U.S. Army Corps of Engineers bulldozed the cattle ranch, constructed a 1,000-man tent camp, an ammunition storage facility, a firing range, and various other military buildings for the training of Salvadoran soldiers. United States Army Special Forces Soldiers, using live ammunition, began training more than 1,000 Salvadoran soldiers in this "Regional Military Training Center."

The soldiers' occupation destroyed Ramirez' life's work. Prime grazing land was bulldozed; the flow of water to the meat-packing plant was diverted to the military camp; cattle were shot by stray bullets; and other cattle became malnourished because Ramirez' employees would not tend them for fear of encountering armed soldiers in the pastures.

Ramirez brought suit for unauthorized occupation, destruction, and taking of his property without due process of law. The district court dismissed Ramirez' complaint as a nonjusticiable political question and for failure to state a claim upon which relief could be granted. 568 F.Supp. 1236. The appellate court reversed, holding that Ramirez did state a claim and that equitable remedies were appropriate. The government's claims of nonjusticiability, lack of standing, and violation of the separation of powers doctrine could not obscure the appropriate relief.

> As Chief Justice Taney stated in Mitchell v. Harmony, the foreign affairs context of Executive action cannot shield unlawful conduct from judicial inquiry . . .. Those words of the Supreme Court are applicable -- squarely, without distinction or modification -- to plaintiff Ramirez' case here.
>
> * * *
>
> In Gilligan v. Morgan [413 U.S. 1 (1973)], the Court noted that separation of powers concerns cannot prevent military officers from being accountable for specific unlawful conduct "whether by way of damages or injunctive relief."

745 F.2d at 1530.

The procedural history of Ramirez' attempt to remedy the unauthorized occupation and destruction of his property and the taking without due process well illustrates the need for a legislative grant of compensation to assure fairness.

First, although he had invested $13,000,000 in the property, Ramirez sought only declaratory and injunctive relief. Ironically, if Ramirez prevailed on his claim that the government seized his property without authorization, he could be denied compensation on jurisdictional grounds under the Tucker Act. See Regional Rail Reorganization Act Cases, 419 U.S. 102, 127 n.16 (1974); Southern Cal. Fin. Corp. v. United States, 634 F.2d 521 (1980), cert. denied, 451 U.S. 937 (1981).

Second, Ramirez was forced to litigate for more than a year the government's contentions that his case was a non-justiciable political question, that he was without standing, and that any court order would usurp Executive prerogatives. Although the Circuit Court of Appeals finally held that the complaint was justiciable and stated a claim for relief, time and money were wasted, and the destruction of Ramirez' land continued. And, victory in the D.C. Circuit Court meant only that Ramirez could begin discovery.

Finally, the government asserted that even if Ramirez, proved his case, injunctive relief would be imprudent, because enforcement would unduly burden the court. Perhaps because of these frustrating threshold problems, Ramirez took his case to Congress. The Foreign Assistance and Related Programs Appropriations Act of 1985, which provided for military aid to El Salvador, conditioned that grant on, among other things, direct compensation for Ramiraz:

> That none of the funds made available by his paragraph may be obligated or expended for the construction of operation of a Regional Military Training Center in Honduras except as provided through the regular notification process of the Committees on Appropriations and until the President provides to the Committees on Appropriations of the Senate and the House of Representatives (1) a report that the Government of Honduras has provided a site for such a Center and assumed responsibility for any competing claims to rights to use or ownership of such site, and has provided written assurances to make that site available on a long-term basis for training by the armed forces of other friendly countries in the region as well as those of Honduras; (2) a detailed plan, which specific cost estimates, for the construction of such a Center at the site provided by the Government of Honduras; and (3) a determination that the Government of Honduras recognizes the need to compensate as required by international law the United States citizen who claims injury from the establishment and operation of the existing Center, and that it is taking appropriate steps to discharge its obligations under international law, in particular the Treaty of Friendship, Commerce and Consular Rights with the United States, as well as its letter of December 14, 1983, to the United States Trade Representative.

Pub. L. No. 98-473, tit. III, 98 Stat. 1884, 1894 (1985) (emphasis supplied). Ramirez' compensation having been ordered by Congress, the Supreme Court, on certiorari, remanded the case for disposition consistent with the will of Congress. 471 U.S. 1113 (1985). See generally Hohri v. United States, 782 F.2d 227, 262, reh'g denied, 793 F.2d 304 (D.C. Cir. 1986) (Favoring S.1053, 99th Cong., 1st Sess.

(1985), which provides $20,000 payments directly to individuals, as "justice superior" to that available in court (Markey, C.J., dissenting)).

Although the Court noted in United States v. Pacific Railroad Co., 120 U.S. 227, 234 (1887), that the ". . . destruction or injury of private property in battle, or in the bombardment of cities and towns, and in many other ways in the [Civil] war, had to be borne by the sufferers alone," that case was clearly distinguishable from Mitchell, Russell, and Ramirez. The destruction caused by raging battle, of course, cannot be considered a compensable loss except by special dispensation of the Congress. See supra p. 9-11 (compensation provided for Micronesians though property destroyed during battle). And, more important, Pacific Railroad has no application to the senseless destruction by American soldiers of the Aleuts' property.

The treatment of the Aleuts' personal property, of course, varied from village to village, house to house, room to room. In some cases, as the evidence demonstrates, personal property was appropriated for official use without proper recordkeeping. In other cases, servicemen looted and wantonly destroyed the Aleuts' prized possessions and heirlooms, and no adequate effort was made by officers to prevent such looting and destruction. And finally, the Atka situation involved the intentional (and irrationally precipitate) burning of Aleut property and homes, putatively to prevent such property and homes from falling into the hands of the enemy.

A more difficult case, which did not reverse Mitchell or Russell, but narrows the holdings in those cases, involves property destroyed in the Philippines by retreating U.S. forces in World War II. Under the facts of United States v. Caltex, 344 U.S. 149 (1952), American Army forces destroyed the property of respondent oil companies to prevent its imminent capture by the enemy. The Army's purpose was limited ". . . to the sole objective of destroying property of strategic value to prevent the enemy from using it to wage war the more successfully." 344 U.S. at 153.

The Court held that the oil companies' property losses were not compensable under the Fifth Amendment, but stressed that "[n]o rigid rules can be laid down to distinguish compensable losses from noncompensable losses. Each case must be judged on its own facts." 344 U.S. at 156. In the Caltex case, the court confirmed in dicta that ". . . equipment which had been impressed by the Army for use by the Army," as in Mitchell and Russell, would be compensable losses to the owners. Id. at 153. The Philippine War Damage Commission, of course, was established precisely to resolve equitable claims in close questions of law and fact, such as presented in Caltex. See, 50 U.S.C. App. 1752(a) (1976).

The line between compensable and noncompensable damages within the meaning of the Fifth Amendment was addressed in Aleutian Livestock Co., Inc. v. United States, 96 F.Supp. 626 (Ct. Cl. 1951). Plaintiff, a producer and merchant in wool, suffered the loss of some 7,000 sheep when the United States Army evacuated Umnak Island and interned its inhabitants. The court denied recovery, explaining that:

> Defendant did not take possession of plaintiff's sheep. It only made it impossible for plaintiff to care for them . . .. Such losses are an incident to the exercise of the sovereign power and duty to protect the people from attack by a hostile power.

Id. at 628. The court noted, however, that the soldiers did take some of the plaintiff's sheep and other property during "midnight requisitions." For this property, the government fully compensated the plaintiff. It is clear, then, that comparable compensation, at the very least, is due the Aleuts for that property destroyed or taken for military or personal use and not as an incident of battle or to deprive the enemy of its value.

The cases make plain that the government must compensate the owner for private property taken or destroyed as a matter of military necessity for the public good. The government likewise must pay for private property destroyed or taken for soldiers' personal use. And, as in the

Micronesian Claims Act, the government may provide compensation where property was destroyed in battle. This Committee now has the opportunity, and the obligation, to recommend full restitution to the Aleuts for property lost, but not restored or replaced, during the period of their tenure in the Southeastern Alaska camps.

B. Quartering Troops in Houses and Other Structures

The Third Amendment to the United States Constitution states in its entirety:

> No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner prescribed by law.

This Amendment has not had the benefit of judicial construction, although it is clear that the language reflects the Founding Fathers' preference for civilian control over the command prerogatives of the military establishment.

On Atka those Aleut homes not destroyed by fire were dismantled for use of the lumber or used to quarter troops or troop-support equipment. The soldiers lived in Aleut homes in Nikolski after the evacuation of the Aleut owners, and their removal to the camps. In Unalaska and Akutan, the Aleuts' homes apparently were not used to billet troops, but property from the homes was "officially used" by the occupying American military personnel, or looted and ransacked by such personnel for no purpose whatsoever.

The Pribilof Islands present a special circumstance. As the Fish and Wildlife Service administered the islands for the protection of the North Pacific fur seal, the structures on the islands apparently were considered Federal property, notwithstanding the Aleuts' inherent right of occupancy, since recognized by Congress in the Alaska Native Claims Settlement Act, Pub. L. 92-203, 85 Stat. 688, approved December 18, 1971. The Aleuts' homes on St. Paul were used to quarter troops; on St. George Island, certain facilities shared by the Aleuts and non-Aleut supervisors were used by the armed forces. In the case of both islands, all Aleut homes were vandalized by the occupying American servicemen.

Although no case has been decided directly on Third Amendment grounds, the Court of Claims has considered and decided one landmark case in which soldiers occupied without compensation the facilities of a private citizen in time of war. In Duncan v. United States, 43 Ct. Cl. 488 (1913), the Court had under consideration a claim referred by the House of Representatives for payment of compensation for use of property. The property, owned by John Duncan and his father, was a machine shop in Charleston, South Carolina. Union soldiers occupied the shop for 169 days during the year 1865. This occupation was temporary, and there was no suggestion, express or implied, that the soldiers had appropriated the shop for public use on a permanent basis.

While the soldiers occupied the shop, they paid Duncan and his father a fair wage for working under their direction and supervision, but they did not pay rent for the facility itself. The Court of Claims had little trouble deciding the issue:

> On the merits the court finds that the reasonable value of the machine shops and machinery, including the material taken and the wear and tear of the machinery belonging to these claimants, was then and there the sum of $8,450.
>
> The court decides, as a conclusion, that the claim herein is equitable, in that the Government of the United States received the benefits from the use of the machine shops and machinery, tools, and materials of the claimants.
>
> The foregoing findings, together with a copy of this opinion, will be reported to Congress.

43 Ct. Cl. at 497-498. Thus the Court found that the fair rental value of a machine shop in Charleston, South Carolina, in the wake of the Civil War, was the incredible sum of $50 per day. And it was the obligation of the United States, having used the property, to provide full compensation -- forty-eight years later -- to the aggrieved owners.

There is no less a duty today, about forty three years after the fact, for the Government to compensate Aleut owners whose homes were occupied during the war years. The fact of this case should fall within the Third Amendment's proscription.

Moreover, in YMCA v. United States, 395 U.S. 85 (1969) another case originating in the Court of Claims, the Supreme Court denied compensation relying on the Fifth rather than the Third Amendment upon a finding that an occupation had not been for the purpose of billeting troops. In that case, during the January 1964 riots in Panama, many of the 1,500 rioters who stormed the Panama Canal Administration Building proceeded to adjacent buildings owned by the YMCA. United States troops entered the building, ejected the rioters, and remained outside the building on guard. When the mob fired on the soldiers, they eventually moved inside the buildings for protection. The YMCA remained under siege throughout the night, and the soldiers evacuated the next afternoon when the rioters set fire to the building.

The YMCA sought compensation in the Court of Claims, 184 Ct. Cl. 427, 396 F.2d 467 (1968), for all damage occurring after the troops entered their buildings. The Supreme Court affirmed the Court of Claims' denial of compensation on the grounds that the troops' attempt to protect the YMCA's buildings did not inure to the benefit of the public and therefore were not to be borne by the public as a whole. The Court noted, however, that, "The court [of claims] found it 'abundantly clear from the record . . . that the military units dispatched to the [scene of the riots] were not sent there for the purpose or with the intention of requisitioning or taking [YMCA's] buildings to house soldiers.'" 395 U.S. at 88. Thus, although the Court decided the case on Fifth Amendment principles, it apparently relied, in part, on the Third Amendment and implied that it would grant compensation where private property was taken for the purpose of housing soldiers.

Unquestionably, the facts and circumstances of the occupation of the Aleuts' houses by U.S. military forces demand compensation for the use of property, as Duncan was compensated under parallel circumstances following the Civil War.

C. Threats to Life and Liberty

The Aleuts were segregated in camps hundreds of miles from their homes, and were coerced by a variety of means into remaining in those camps by government officials. As others in the Aleutian theater were conducting their lives under relatively normal circumstances, the Aleut evacuees were suffering deprivation and disease. They died in the camps established for their care.

The Supreme Court has recognized that official discrimination by the Government can be so unjustifiable as to be violative of the Fifth Amendment to the Constitution. As noted above, the Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property without due process of law . . .."

The leading case involving the question of official discrimination by Federal officials, so offensive as to be violative of the Fifth Amendment's due process clause, is Bolling v. Sharpe, 347 U.S. 497 (1954). The issue was whether segregation of public schools in the District of Columbia, a Federal preserve, was violative of the Fifth Amendment, as such segregation had been determined to be violative of the Fourteenth Amendment's equal protection clause applicable to the several states. The Court discussed the meaning of "liberty" in the Fifth Amendment sense:

> Although the Court has not assumed to define "liberty" with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objective and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of liberty in violation of the Due Process Clause.

347 U.S. at 499-500. If the government of the United States cannot segregate school children by race under the mandate of the Fifth Amendment, then certainly the government cannot segregate Native villagers in internment camps, regardless of the original justification for removal of those people from their homes. The official discrimination, the

isolation and deprivation suffered by the Aleuts, was at least as extreme as that condemned in Bolling v. Sharpe.

Among other rights, the "right to travel" is explicitly protected as a fundamental liberty under the due process clause. In Kent v. Dulles, 357 U.S. 116 (1958), the Supreme Court recognized "[f]reedom of movement across frontiers in either direction, and inside frontiers as well, as a part of our heritage. Travel abroad, like travel within the country, . . . may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values." Id. at 126.

The liberty to move freely was denied the Aleuts without basis in military necessity or any other doctrine. It was simply convenient to isolate the Aleut population, to limit their personal freedoms while in the camps.

As the Commission established beyond doubt, the Aleut people suffered in the camps from lack of adequate shelter, lack of medical care, lack of proper sanitation facilities, and lack of potable water supplies. The resulting deaths were inexcusable, and must constitute a basis for compensation to the survivors of the victims, and to the Aleut community as a whole. The government, after all, cannot deprive a person of life without due process of law.

Congress should provide an appropriate measure of damages for the loss of life and physical debilitation suffered by the Aleuts in their years of internment.

IV. CONCLUSION

As noted above, five methods of compensation have been determined by the Commission on Wartime Relocation and Internment of Civilians to be appropriate:

1. The establishment of a trust fund for community and individual purposes to compensate the Aleuts for injuries suffered as a result of the evacuation;
2. A direct per capita payment to each of the few hundred surviving Aleuts who were evacuated from the Aleutian or Pribilof Islands by the federal government during World War II;
3. The appropriation of funds to rebuild and restore the churches damaged or destroyed in the Aleutian Islands during World War II;
4. The appropriation of funds to clear away the debris that remains from World War II in and around populated areas of the Aleutian Islands; and
5. A Congressional declaration that Attu is native land and as such should be conveyed to the Aleuts' Native Corporation.

These recommendations are in keeping with both the facts and the law. The Aleut people therefore respectfully petition the Congress for legislative relief that would give effect to the Commission's recommendations.

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